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Government
Publication

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ORGANIZATION

MONDAY, MAY 2, 1988



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitution:

Kozyra, Taras B. (Port Arthur L) for Mrs. O'Neill

Also taking part:

Reville, David (Riverdale NDP)

Clerk: Carrozza, Franco

Staff:

Gardner, Dr. Robert J. L., Assistant Chief, Legislative Research Service



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, May 2, 1988

The committee met at 3:57 p.m. in committee room 2.

ORGANIZATION

Mr. Chairman: We have a quorum and we have representatives of all parties present. I welcome you to this meeting of the standing committee on social development. We are here to discuss the organization of the committee's business from this point onward.

We have before us, I think you know, a subcommittee report. That is one thing. I have received correspondence from Mr. McGuinty, who has been very interested in our considering in some way matters to do with senior citizens' affairs. Like others here, I have heard things about the business which is likely to be before this committee in the next few weeks.

The other thing, as far as organization is concerned, that I would like to mention to you is that the budget that we struck—you remember it was a pro forma budget—at the first meeting is now effectively obsolete. If we are to move forward to new business, we will have to consider that too. How would you like to proceed?

Mr. R. F. Johnston: With the report of the steering committee.

Mr. Chairman: OK. Does everyone have a copy of the report of the steering committee? There are copies here.

Does anyone else have any comments with regard to our first item as to how we might proceed thereafter?

Dalton, I mentioned your item. Should we reconsider it at some point?

Mr. McGuinty: Are we to consider estimates along the way?

Mr. Chairman: That is a part of the business which I mentioned that I have heard will be coming to us.

Mr. McGuinty: Is there any particular order established in which the estimates will be presented to us?

Mr. Chairman: Could we come to that at some future point?

Mr. McGuinty: All right.

Mr. Chairman: I will put that down. Do members agree with the items I mentioned, that we will consider all of those at various points? OK.

With respect to the subcommittee report, would someone like to begin?

Mr. Campbell: I expect we will be dealing with the recommendations from the subcommittee, and then when that debate, if such is being held, is over, there would be an appropriate motion. Is that your understanding?

Mr. Chairman: As I understand it, this report has no validity until it has been endorsed by this committee. We are now considering that.

Mr. R. F. Johnston: I think we should pass it.

Mr. Reville: It will be a little hard to hold the hearings in April, but—

Mr. R. F. Johnston: Do you think so? Do you feel it is too late for that now?

Mr. Campbell: If you could change it, Mr. Chairman, obviously in the dates that have passed by and so on that—

Mr. Chairman: Mr. Campbell first, and then Mr. Johnston.

Mr. Campbell: If the subcommittee is making certain recommendations, perhaps it would be in order that, except for the changes in dates, that the subcommittee report be in order and, if so, ruled by this committee that we should proceed on that basis. Perhaps we could deal with what the content of the recommendations are and then see what the feeling of the committee is.

Mr. R. F. Johnston: Given that this was all around Bill 50, Mr. Reville's bill, and that we were unfortunately unable to get support by the House leaders to be able to proceed with the times we have established, I am sure the committee would have gone for this at that time. I think most members canvassed felt that way, but we now have to look at this in the context of other things that may or may not be on our plate and the fact that we are not between sessions now.

If it is not possible for the committee to move from place to place while the House is sitting without exceptional authority from the House—and that is very rarely given; I do not think we will be in the position to ask for that—my presumption is that we are going to have at least—what are the bills again?—Bills 70, 107, 109 and the new Bill 76 before us.

Mr. Chairman: Whatever the new number 76 is.

Mr. R. F. Johnston: Each of these is a government priority, my whip tells me, and therefore asked to be reported back before the House rises, which means these are not things that we presumably will be doing over the summer. If they are things that are ordered out to us—and I am hearing that they will be—then they are all items that I think we can deal with within the time frame that we have between now and the end of this period.

I suggest they be given priority over estimates at this stage, so we can get them done if the government is interested in them as priorities. Then I suggest we do whatever estimates we have left over until we rise. Then perhaps, if the committee is in agreement—and I guess this is what Mr. Campbell was raising—I suggest we move to dealing with Bill 50 hearings in the summer, unless for some reason or other that is preceded by other kinds of government priority which we can deal with at a later time.

At least at this stage, we should make it our tentative plan to proceed to the summer. If there were agreement on that kind of an agenda, then we could at least have the discussion later on about when we would like to try to meet, what would be appropriate for us during the summer, whether the kinds of schedules we set up for the March thing are appropriate, when that is best for

people around their holiday projections, which other committees may be sitting and things like that.

Mr. Chairman: Does any other committee member have anything to say? If not, Mr. Reville is the visitor. Would anyone else like to speak at the moment? Mr. Reville.

Mr. Reville: I think there are two other good reasons why—at least three reasons now that I think of it—the hearings on Bill 50 might better be held in the recess, after the spring session. The first reason is that the Graham committee, which was appointed by the Minister of Health to review community mental health issues, has not yet reported, but that report is anticipated.

Second, I believe there will be, and I think your chairman will know about this, a reference to this committee from the standing committee on public accounts perhaps. It is something that we did discuss in public at one time. I do not know what the committee will do, but there is some possibility that the committee may be reviewing matters having to do with boarding and lodging homes which might properly fit in with hearings on Bill 50.

The other thing is that I believe Bill 50 is the sort of bill on which we would want to get input from as wide a group of constituencies as possible and, therefore, I think it would be necessary to travel, given that there has never been a Community Mental Health Services Act before. It would be wise for this committee to get as much input as possible from people so that we can craft the very best possible bill.

That is why I think it would be better for the committee to be cognizant of the fact that there are a number of government bills on health that are already coming down in the next few weeks and that it would be useful to schedule time when the committee could meet on a fairly concentrated basis in some of the centres around the province to hear what people have to say about community mental health and their views thereon. So I think the advice my colleague Mr. Johnston has given is good advice.

Mr. Campbell: On a point of information, Mr. Chairman: I expect if we were to move on that case and then on the business Mr. McGuinty has also proposed, some form of review of the budget would be in order for travel, because, as you have mentioned in your opening remarks, it was basically with the former budget. Therefore, I think we would have to deal with that at some point, given the earlier questions about the budget that were dealt with when we first met. Then I think that would be in order probably once we have dealt with the government bills that perhaps are coming down.

Mr. Chairman, the first date being perhaps Thursday that we would know that, do you know if we can schedule another meeting?

Mr. Chairman: If I can summarize, the suggestion essentially is that we are going to receive business from the House and that there will be bills and likely estimates. The suggestion is that we proceed in some order to be determined with the bills; that we then, if we have time or whatever, proceed to the estimates; and that consideration of Bill 50 be therefore left until the summer.

If I might, as far as Mr. McGuinty is concerned, you wanted to say something with respect to estimates and your concern about senior citizen policy.

Mr. McGuinty: It occurred to me that if we have the right to establish an order of priority about the estimates presented to us, if we could get the estimates from the minister dealing with the elderly, we might consider a matter I wanted to raise at that time.

Mr. Chairman: Essentially, if and when we get the estimates, you would actually like the estimates of the Minister without Portfolio responsible for senior citizens' affairs (Mrs. Wilson) to be first in order that we can deal with your request, which has to do with the examination of senior citizens' affairs.

Mrs. LeBourdais: When we last met, essentially we were doing estimates. I am just wondering how Bill 50 has been pushed to the forefront for discussion. How did that come to be?

Mr. Chairman: It came about because we had a subcommittee meeting on January 20, I believe it was. This was a steering committee essentially. That committee came forward with the suggestion that Bill 50 be considered by this committee.

Mrs. LeBourdais: Were there a number of issues put forward?

Mr. Chairman: Just consideration of the bill itself and, as you see from the report of the committee, the suggestion was made that the clerk should prepare a procedure for studying that bill.

Mrs. LeBourdais: But it was not suggested to look into any other bills or to address Mr. McGuinty's subject of seniors? I am just wondering how we got—

Mr. Chairman: By the way, Bill 50 was referred to us by the House.

Mrs. LeBourdais: OK.

Mr. Chairman: Therefore, our subcommittee considered it. The other thing of Mr. McGuinty's is a little different. He prepared a paper, circulated it and asked that the committee consider it.

If I might go back to that, Mr. McGuinty, the idea is that we would ask that those estimates be considered first. If I might, to the experienced members of the committee, I am a bit concerned that I see the order of the estimates is exactly the same as it was and we might therefore find ourselves considering the same estimates we considered before. Is there anything you could do about that, Mr. Johnston?

Mr. R. F. Johnston: It is unusual for a request like Mr. McGuinty's to be made. I have not seen it. It is possible for us to request, but the decision will still be made by the House leaders. The reason you see it listed as it is is that this just is a listing of them and we do not know at this stage what the actual priorities will be amongst the House leaders.

There are two ways we could approach Mr. McGuinty's suggestion. One would be to canvass the critics, which would be very important to do, to make sure that this would fit into their priorities and then talk to our own individual House leaders about it and see if seniors' affairs thing could be brought up first; or, and it would be quite unusual, the chair on behalf of the committee could write to the House leaders and say that the suggestion had

been made by a committee member and was being looked upon favourably by the committee and would they consider it.

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It will be considered in the very political mix that is there around estimates, in terms of how much time each one requires, when the last ones were done, what seems to be hot or cold at the time in terms of the various critics involved and other kinds of priorities.

Either of those things would be possible, though. I have no problem, speaking personally, in terms of the notion of changing rules of committees, that we do it on behalf of the committee, but we have to understand that the sensibilities of the critics and the House leaders have to be taken into account.

Mr. Jackson: I have two points. One is on the ordering up of the estimates in sequence. The rationale, we were advised, is that they were selected on the basis of new ministers being thrown into the process so quickly. That criterion no longer is valid, I believe. Perhaps we might examine that directly with the House leaders.

The second point was on Dalton's request. I, too, was under the impression that we would go through a certain process of having it referred. Our business would be ordered up because of the House. I should serve notice that I will be tabling my private member's bill which specifically calls upon this committee to engage in a certain examination and review. That will become known within the next week.

My private member's resolution is specific. I actually waited until such time as Mr. Reville's bill, which deserves priority and which has been put off long enough—I moved my private member's time until such time as we could deal with this item. I suspect, if we can order up our business and get agreement, I will be presenting my concerns just as Mr. Reville has with his bill, which is why it is being ordered up for our business.

Clerk of the Committee: To clarify, Mr. Johnston is absolutely correct. The House leaders set priorities on what estimates they wish to have, either in the chamber or in the committee. You are absolutely correct, Mr. Johnston, that this committee could request, through the House leaders, that they do assist Mr. McGuinty to have his estimates first, as they choose and as they arrange them for our committee. So we do have an option.

Mr. McGuinty: Could I deal with the tourist thing first then?

Mr. R. F. Johnston: There is one other thing, Dalton. I do not know if you will find this useful. The other way to get things out to a committee, which does not constrain you the way the seniors would constrain you, because there are not very many hours—I think it was seven hours and they may actually negotiate it lower than that possibly—is to have 20 members stand on a petition which you could circulate or any member could circulate, asking that the annual report of the Ministry of Community and Social Services, or senior citizens' affairs, it does not matter which—No, there is no statute for the seniors yet, I do not think. Therefore we could order that—

Clerk of the Committee: I am not quite sure. I was going to check on my list.

Mr. R. F. Johnston: I do not think it is done. But you could still do it with the Ministry of Community and Social Services. You could take the annual report of the Ministry of Community and Social Services and refer it to this committee. Then you could come to the committee and say, "What I want it out for is so that we can discuss that portion of the report which would deal with the services to the elderly in the province." Or you could do it with the Ministry of Health; it does not matter which.

Then that automatically becomes something we can order our business around, separate from estimates and that kind of thing, because within estimates you would find it difficult, with that kind of an estimate. With two critics wanting to get at a minister, with a very limited amount of time, with the minister making an opening statement and a rebuttal to the critics, there is not, frankly, that much time left on that size of estimate for private members to participate.

You might want to reflect on that, whether you would prefer to take the other route and get 20 of your colleagues to sign that kind of petition. I can show you the standing order. Then you could get it out to us that way, of course, to order at our next meeting.

Mr. McGuinty: I appreciate your advice. Thank you.

Mr. Chairman: Can I just go back to the first thing? Do I sense general agreement that we will consider, as soon as we know what they are, government bills? We will then, having finished that, proceed to estimates. OK? Do I need a motion on that or are we comfortable with it?

Mr. R. F. Johnston: It is probably a good idea. The only factor, and I may ask some advice from the clerk on this, is that the first bill coming up which is likely to be ordered out to us comes up tomorrow, the Ottawa-Carleton bill. If we want it out and if it has been ordered out to get public input from people from that area, there are two things we may want to take into account. One is that we may want to advertise to people in that area and we may wish to invite people to come here. In some cases, the committee may wish to assume some expenses for those people to come from Ottawa to here because we cannot travel from place to place. If that is the case, that obviously needs some kind of budget proposal this week, I think, rather than next week.

The second thing would be, if we do choose to advertise, we have to give some advance warning in terms of placing the ad. It usually takes four or five days to get that into the papers. Then we have to wait for response time, clearly. We may want to try to slip in an estimate before we do that. That is what the House leaders and all are suggesting. It may be that we could pass a motion saying it is our preference to move in that way, but I think we might want the flexibility of understanding that, from time to time, depending on the kind of announcements we have to make about hearings, we may wish to intersperse some of the smaller estimates, or something like that, if that were possible. I do not know.

Mr. Campbell: I have a sense that we are still in the midst of ordering down business. Perhaps if there is a way to do this, we could meet again on Thursday, having a clearer idea of what bills are being referred to us. I have a sense that perhaps on Thursday there will be two or three of these decisions that we have to make.

If we were in a position now to set the agenda, we could meet again on Thursday to make sure that we started on that process, if the committee concurs.

Mr. Chairman: By the way, it does seem to me that immediately after tomorrow, immediately it will be clearer, and I suspect it will be even clearer by Thursday. I have no particular objection to meeting tomorrow if people think we can do something, but Thursday will be fine.

By the way, it does seem to me that we can meet as a group on Thursday and thereafter our subcommittee can meet to orchestrate these things and consider the budget and things of that type. I see some people are rather restless here. Would someone care to move that in a general way we proceed as suggested: bills first, estimates second—some sort of pattern in there—and Bill 50 in the summer.

Mr. Tatham has so moved. All those in favour? Agreed.

Can I assume that this meeting we will have on Thursday will consider such things as the budget and the orchestration Mr. Johnston was just talking about?

Can I go back to these estimates in the general case? My point was that we might find ourselves doing skills development and disabled persons again—not that I am against that, but it does seem to me to be rather inappropriate.

Mr. Reville: We will not. It will not happen.

Mr. Chairman: It does not happen? Is there anything that I should do on estimates? Either Mr. McGuinty might approach the critics, as Mr. Johnston has suggested, or I as the chairman might ask for a particular order. I simply suggest that. What does the committee think?

Mr. Campbell: If we have it clarified as to our business to Thursday, beyond that we should try to work that out with the House leaders, because when push comes to shove, it is going to be the House leaders who make the decision available to the critics, I believe. Perhaps it would be in order to have that question hang for the moment, if you will, until we clarify what we are doing Thursday, then take the estimates, still dealing with all of the concerns of this committee, and have the House leaders notified that we have decided that is the order we would like to go in, if they agree.

Mr. Reville: My recommendation would be that you make a request to the House leader immediately that you would like to do seniors, if that is what you want to do, because the House leaders are going to meet on Thursday. You might as well have your request on the table. There is a whole range of factors that go into the ordering of estimates, some of which Mr. Johnston has alluded to and some of which he has not alluded to.

If it is agreeable to all parties to do the seniors estimates, then those estimates might be before you while you are advertising and what not. If you do not want to do them right away, then having them ordered means you have something to do when you are ready to do it. So it is not a bad idea to try to anticipate the fact that you will want an agenda, and who knows whether the bills that are expected to come here will actually come here or not. Some of them clearly will, but you still have to advertise, which creates a hiatus,

and you might as well knock off your estimates, particularly seeing you have members interested in some in particular. It would be useful to canvass critics and House leaders immediately, I think.

Mr. R. F. Johnston: I agree. The only caveat I would say is that most critics want about two weeks' notice of receiving the estimates books so they can actually examine them appropriately and that kind of thing; so we have that kind of time constraint on us as well. It may be that the estimates have already been provided to the critics in that portfolio. I have no idea.

Clerk of the Committee: They were tabled in the Legislature last week; so it will be at least a week or a week and a half.

Mr. R. F. Johnston: That is not bad shape. The other thing is that if Mr. McGuinty on my recommendation, feels he would not get sufficient whack on these kinds of issues in the estimates process, he should know that it would not preclude him from still ordering out the annual report. It would not hurt at all to be able to do that.

Clerk of the Committee: As further information to you, Mr. Johnston, unfortunately, it is not released yet. I have lists here of the other reports assigned to the committee and it is not on the list.

Mr. R. F. Johnston: You could do the Ministry of Community and Social Services and still do a lot of the same issues without any trouble.

Mr. Chairman: Perhaps Dalton can follow up Richard's last suggestion. I could quite easily write to the House leaders with a paragraph therein which says quite clearly as long as the critics can be given appropriate notice and so on, if that is what people wish.

Mr. Jackson, is that OK with you. I understood the point you were making. Are there any objections to that? I will then do that today. Is there any other business? The next meeting will be after routine business on Thursday and the clerk will let us know the room.

Mr. Reville: One of the dilemmas that your committee should be aware of, Mr. Chairman, is that we are already beginning to think about scheduling for the summer—House leaders and whips. For instance, the select committee on education has asked for time in the summer. If it is the wish of the committee to do any hearings in the summer, you may want to direct your mind to whether you want to do them in July, or maybe you want to do them in August, or maybe you want to do them in September, because there will be competition for the available times in the recess and there are several schools about whether it is better to have July off or August off. There is no consensus on that.

There also is some likelihood that the House may not adjourn until into July. That always happens around the end of the session; there begins to be some confusion about when the day of adjournment is. I am suggesting that should the committee decide to do hearings in the summer, you should think about that and get the request in or you will find, as you did during the last recess, that there is no agreement to sit.

Mr. Chairman: OK. Is that something that we should address now or Thursday, when we know what we are doing?

Mr. Campbell: Mr. Chairman, maybe to give everybody some thoughts, since the order of business seems to be a little clearer than it was, perhaps now we could mull it over. If you can get the letter to the House leaders, then we could proceed on Thursday.

Mr. Chairman: On a personal note, I would be delighted to orchestrate our own program for change as far as we can.

Mr. R. F. Johnston: Two things. The major one is that I think we should get an idea from Mr. Reville as the mover of the bill, who I have no doubt would want to be participating on the committee at that stage, when he might be interested. I am not sure whether he will be around Thursday for another one of our routine orderings of things so we get an idea of what the agenda of the mover of the piece of legislation is and see if we can work around that or not. It may not be possible but at least it would be good to get that idea.

Mr. Reville: I would prefer July hearings or September hearings rather than August hearings. Clearly, I can make myself available for either, but I am one of the people who think it is better to work in July and not in August.

Mr. Chairman: Very good.

Mr. R. F. Johnston: We have two and a half weeks down here on this original agenda. Do you still feel that is appropriate during the summer?

Mr. Reville: I would think there would be more flexibility about the travel.

Mr. R. F. Johnston: Do you want to look at three weeks?

Mr. Reville: Yes.

Mr. Chairman: OK. We have noted that. Is there any other business?

The committee adjourned at 4:26 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ORGANIZATION

THURSDAY, MAY 5, 1988

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Tatham, Charlie (Oxford L)

Substitution:

Keyes, Kenneth A. (Kingston and The Islands L) for Mrs. O'Neill

Clerk: Carrozza, Franco

Staff:

Gardner, Dr. Robert J. L., Assistant Chief, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, May 5, 1988

The committee met at 3:35 p.m. in committee room 2.

ORGANIZATION

Mr. Chairman: It seems to me that the principal item of business we have before us is Bill 109 and how we are going to deal with it. Mr. Jackson has mentioned one other item, which we can consider under any other business. Are you agreed that we basically deal with Bill 109 today, the organizational side of it?

Mr. R. F. Johnston: And discuss the budget as well.

Mr. Chairman: And the budget. OK, fine.

As you know, Bill 109 has been referred to us. I guess we would want to start as soon as possible. In theory, we can do that within five days. Do you have any sense of when we should start?

Mr. R. F. Johnston: Five working days from the time of the introduction—

Clerk of the Committee: May 3.

Mr. R. F. Johnston: —which is May 3. So what is the start?

Clerk of the Committee: Next week, Tuesday or Thursday.

Mr. R. F. Johnston: For personal reasons, I would rather not start on Monday.

There are some obvious groups to invite and if we can inquire as to whether they are available to come that quickly on it, we should do so, I think, and make up a short list of those who would be interested.

The minister in the House also indicated that we should travel to Ottawa, as you may recall—I took him up on that and he reaffirmed it—which would require our making a formal request for that, as I understand it, and for a formal motion to be passed. That would be something to consider.

It might be that before we decide whom to invite, if we are going to, maybe we should discuss the notion of whether we are going to go to Ottawa because that is where most of the people directly interested in the issue will be from. Maybe we should make that decision as to whether or not we concur as a committee to try to do that.

That might be more problematic in terms of our schedules. I do not know. I would have to look at my book.

Mr. Campbell: Maybe I could suggest that we explore that. Certainly, we have to get special permission to travel while the House is in session, you understand.

Mr. Chairman: I understand that.

Mr. Campbell: I also realize that if we all agree, the House leaders agree and everybody agrees, we go and it will not be a problem. Second, we deal with finding out when everybody is available to get rolling on this and let us do it, subject to everybody's schedule, of course.

Mr. Chairman: Could we come at it to make a rough estimate of the total time we need to allocate to it? There is the question of hearings. By the way, I must say it would seem to me very inappropriate if we did not go to Ottawa under the circumstances.

So there is a question of hearings here and in Ottawa, and then there is the question of the clause-by-clause examination of the bill itself following the hearings. What sort of time frame are we talking about, the number of working days or something like that?

Mr. R. F. Johnston: There are quite a number of factors. One, we need an idea of how many people we would have to be seeing, how many deputations we anticipate in the Ottawa area of the formalized groups, what other groups may wish to attend and how open we are going to be to large community participation.

There is the question of Hansard and, of course, French simultaneous translation, which we would have to be able to set up, which would need a few days to get going as well.

It may not be possible for us to think of doing this next week. It may be necessary, I would think, to have that week in between and see if we can get ourselves up to Ottawa either Monday or Tuesday or something like that of the following week. Then whether or not we stay overnight and do extra hearings or do an extended day of hearings through until late in the evening or something like that would really depend on the demand, which at this stage I cannot give you a good idea of what I think it will be.

1540

Mr. Campbell: I would suggest that we first of all explore it and get the formal thing out of the way. I agree we should go to Ottawa, if that is the case. That is number one.

Number two, between your staff and everybody else, I suggest we get that working and notice be given. I guess we decided it is an open community hearing. Therefore, notice should be given, I expect, as to place and time and all of that stuff.

I guess then, subject to what kinds of delegations we are going to get, we would have to decide whether it is a one- or two-day event. Is that fair?

Mr. R. F. Johnston: There are several problems around this. Maybe we should put them all out there and just see what we are left with.

One of the problems, as far as I know, is that the Le Droit strike is still on, is it not? That is the only French daily that has large distribution in that region of the province and through which we can get to the French community with an ad, if we really want the public to participate. If that is our goal, that is really problematic.

Mr. Campbell: But there are French media—television and radio—that we could use instead of that. I do not know if that is normally done, because all I have ever seen is newspaper ads, but let us just see if we can get around it that way.

Mr. R. F. Johnston: Not normally. I cannot think of precedents, actually, for a committee using TV at all. Maybe we could try to get some radio spots and see where that is, but I do not know what the rules are.

Clerk of the Committee: We have used TVOntario, the legislative channel, to place our ads.

Mr. R. F. Johnston: Yes, that is right.

Clerk of the Committee: We also have tried to utilize the radio stations, but unfortunately we have not been very successful getting public announcements. They suggest that we pay for them.

Mr. Campbell: You would in the newspaper. To be fair, you do pay for a newspaper ad. It always bothers me that you pay for newspaper ads because it is traditional, yet expect the electronic media to give a freebie here. I really do not think that is fair. If that is the procedure, of course we have to live with it.

Mr. Chairman: Yes. The strike is a complication, so it has to be properly advertised. Can I just think it through a little more?

First of all, it is a question of whether we should start work here or in Ottawa. Psychologically, by the way, there is a difference between those two things. It obviously would be much easier for us, particularly dealing with groups that we have invited using various criteria, to start work here. We should think that out. Should we start here or start there?

Then, as far as these hearings are concerned, it seems to me—let us say we are in Ottawa—we might well start with a day of invited groups. This would be orchestrated and proceed into a public hearing. I have no sense of the time that is involved there, but again, to be honest, one day of hearings there—I would imagine there is going to be a very considerable response, but even if there was not—sounds very much like a token visit to Ottawa to me.

Mr. R. F. Johnston: It depends how we handle it. I guess the decision we have to make is how public we want to go. If we are doing it by invited groups, there are a number of groups which have direct interest in this: the various boards within the Ottawa-Carleton region, teachers' federations in the region and maybe some direct parent groups that we could identify as well, which, I am not aware of, but members from Ottawa might be able to help us with that. We could have a list of, say, probably 12 or 15 invited groups without too much trouble. Some of them are given almost no notice because they are really on top of the issue and others need a little bit of notice to come and participate.

We could do most of those in a day, if we took a long day, started very early in the morning and sat right through till the late evening, stayed overnight and flew back on the first plane in the morning, that kind of thing. But if we were really to advertise and ask the public so that parents could come in, not as representatives in organizations but on their own behalf, and students come in, my guess would be we would end up needing two days.

We would also need that ad to be placed four or five days before we would have them come in because they need to prepare a response to the bill. The two kinds of responses we get would be on the principles involved, which should not take people too long to respond to because they are fairly clear. You can position yourself around them in various ways, but they are fairly clear. Then there is the more legalistic interpretation of the bill, and that will be longer because Bill 109 is a fairly complicated piece of legislation.

Maybe we should contact the obvious groups, the boards involved, for instance, start off with them, and the federations, and see what other response there would be there, so we can get some idea of that. If they think there is going to be a major response, we should try to find some means of getting the word out publicly in a different fashion.

If not, we should try to pull in names through other means. The other means are basically determining the groups which have been in contact with the ministry during this long consultation process which has been going on, and get those lists to see if those people want to come back in, and let them tell us if there are other people—that kind of thing—and develop our own list without going public, in that sense, on it at all. That is the other option.

If we did that, we could easily spend one of our normal sittings here being briefed by the ministry on the detail of the bill—that might be very useful for members, because a lot of it, not just its algebraic part, is close to incomprehensible—and maybe a little of how it interacts with some of the other reform bills that are around. That might be useful as well.

We could spend one day doing that next week without too much difficulty at all, and then hope to have set up at least one day of hearings in Ottawa for the week following, with all those groups we can contact by phone directly that we know are involved. I do not know how we decide this; maybe it is the steering committee that has to decide, if the committee wants some flexibility on this; then decide whether we are going to go with some kind of public announcement system through the radio or something, or whether we are just going to try to find whatever lists are out there and ask all the protagonists who are involved to give us any names they can of people we can contact, and then throw it into the clerk's lap to make those calls by phone from here.

Mr. Campbell: I think that is a fair assessment of where we are going. There are other factors than just our decision-making that come to bear here, and they have been well laid out, and I think we just go with that plan. The first thing for us is to find out if we get permission to go.

Mr. Chairman: Can I ask about hearings here? If we are advertising that there are going to be hearings and we are inviting groups, do we automatically give them the option of a day or a number of days here, as well as the possibility of meeting with us in Ottawa? That is a sort of simultaneous thing. Do we advertise and say we are available, that people can come here on certain days, or meet with us in Ottawa on certain days?

Mr. Campbell: The biggest effect is in Ottawa. After Ottawa, we would have a pretty good sense of where it is going and what kinds of concerns there are out there, if any. We may find, of course, that there are not a lot of concerns, that it pretty well follows what is happening. We can make a decision after that to see where we are going.

I think the idea of having the hearing here was to get through the preliminary and get through the stuff ourselves so we are comfortable with what is being said, and then do that. Is that not what you were suggesting?

Mr. R. F. Johnston: Primarily. If I might just add something to this, Shelley Martel, I think, read into the record concerns from the Sudbury District Roman Catholic Separate School Board around its potential implications in constitutional terms. It may very well be that the Toronto location, as you are suggesting, Mr. Chairman, would be useful to province-wide organizations based in Toronto that would like to come and talk about this bill's ramifications if it is considered a pilot, rather than as a site-specific bill for Ottawa, as the minister was saying.

That is how I would distinguish. I think the most important hearings for us on this are in Ottawa, with the people who are going to be directly concerned immediately, but there very well may be other players who would like to come here and talk about implications for the Constitution and other things. We could just add that we are going to need a brief session before we attend so we are able to deal with some of those concerns.

Clerk of the Committee: If I could assist the committee, would it be possible for the committee to consider specific motions, for instance, a motion to request that the committee travel to Ottawa? That would be first, a certain number of days, because it would assist the clerk to prepare a budget. If you were to suggest we would like to stay three days in Ottawa, I could place that in the budget, then a motion to have simultaneous translators assist the committee in Ottawa, and so forth.

Mr. R. F. Johnston: Take one at a time.

Clerk of the Committee: One at a time.

1550

Mr. R. F. Johnston: I would move that we request from the House the liberty to go to Ottawa for up to two days. That would be my first motion. In speaking to it, I would just say that I would find it very difficult in my schedule to work out a three-day period or longer. Two would be pretty tough.

Mr. Chairman: The motion is carried? Any objections?

Mr. Tatham: Up to two.

Mr. Chairman: Up to two. OK. That is what it says.

Mr. Tatham: If we can do it in less than that, let us do it in less than that.

Mr. Chairman: OK.

The Clerk of the Committee: Could I suggest that the clerk contact the ministry and receive from them a list that the ministry has been speaking to of these groups? In that way it would give this committee truly an idea of what the groups are in Ottawa. I could contact them and suggest what is the best date for them, and I could come back and say, "Gentlemen, these groups prefer these dates," and this committee can make arrangements for a future time, let us say two weeks down the line, which is easier to arrange.

Mr. Chairman: Can I also suggest, though, that if any member of the committee or any of the parties want to suggest names to the clerk, he should do so.

Mr. Campbell: That will give us a good ministry's committee. What are we up to? About nine and running.

Mr. Chairman: I think the mechanics of this have to be worked out. There are a number of things, and we will try to cope, Mr. Tatham, with everything we possibly can.

If I might, though, I am trying to think it through. I am sure there are motions we need to pass. The suggestion is that we are going to start some time next week with a briefing from the ministry, and I think that is a good idea. Might I also ask, though, what you think of the idea of our having a paper done for the benefit of the committee, which is, by the way, independent of what the ministry will be doing, about the background of this in a much broader sense, just sort of the history of it in the province and some of those things. I find some aspects of it interesting. I am sure there are many that I do not know, but I wondered if the committee would be interested in that.

Mr. R. F. Johnston: You want to have this meeting next week?

Mr. Chairman: Oh, no. That need not necessarily be for next week. It just seemed to me that if we go into it with as broad a knowledge as we possibly can, the ministry, I am sure, will give us the immediate history of it.

Mr. R. F. Johnston: Yes. I think for some members it would be helpful to know a bit of the historical background, especially the Bill 75 implications, etc., that precede all of this. If that could be pulled together easily from work that has already been done in library research, then that would be something I would suggest would be useful to us all. But I am just worried about adding a huge load on to library research to do that just like that for us; I think that would be really unfair. Can you find out just what the -

Mr. Chairman: What do you think of that?

Mr. Garner: Most considerate, Mr. Johnston. I think we could probably put together some stuff fairly quickly in terms of the various commissions, task forces and what not that have addressed this issue in the past, and some background about the origin of the idea and how it has been debated. I do not know that we could do too much more than that before the committee started to meet. I guess we are looking at a four- or five-page bullet-point type—not very much, but if that would be of use to you, I should think that is manageable.

Mr. R. F. Johnston: Late next week sort of thing? Thursday next week?

Mr. Chairman: I hate to interrupt, but next week is one deadline, and whatever there is would be very good. It does seem to me that when we go to Ottawa, for example, this sort of information, and if you could gather it more by then, would be useful. I do realize that the experienced members of the committee have a lot of this sort of in their heads or at the back of their minds, but I know that I, for one, do not.

Mr. R. F. Johnston: I am not sure exactly where it is resting at the moment, but it may be useful to dredge it up and it may not. But there are a number of reports that we could actually get copies of if you want more detail on the work Albert Roy did and others. It might be easy to get as well for people who want more than the bulletin form on it. But if Mariette Carrier-Fraser is coming, as I presume she will, she has a lot of this in her head, and it would be very helpful in terms of just leading us all through the steps that are taken, the history behind the bill, for getting the briefing of actually going through the way the bill is laid out.

Clerk of the Committee: Can you give me an idea when you wish to have the ministry here? Would next Thursday be sufficient, or earlier than that? We need to give them some time to prepare the material. Next Thursday?

Mr. Chairman: This essentially means that our next meeting, although there might be something organizational for a small group before then, would be Thursday. Is that agreed? Does anyone have any concerns? OK.

Mr. Garner: We will take it from research that we will try to pull together what we can for next Thursday and the committee can look at that. Then if they wish to have more comprehensive stuff done from there, away we go. One thing we can do, obviously, as an appendix to what we do, is the executive summaries of the various commissions and so on. We will pull together what we can within that time frame. If people want more, we will take it from there.

Mr. R. F. Johnston: Can you ask the ministry people when they come maybe to bring along—it may not even be from the Education area but may be from Municipal Affairs—any of the people who are expert on the interrelationship between these various municipal reform bills at the moment. That might be really handy, just an understanding of how the whole enumeration thing fits into this and how that affects the number of trustees per board and that kind of thing.

Mr. Chairman: On these other things, there is the question of whether we need formal motions, but I had simply assumed simultaneous translation. If you think we need a motion to that effect, it would be extraordinary—we do need a motion.

Mr. Campbell moves that simultaneous translation be provided.

Motion agreed to.

Mr. Chairman: We have the number of days in Ottawa. Do we need a formal motion here as to the probable number of days? No, we do not? That is quite straightforward.

Clerk of the Committee: It is quite straightforward, because we need three days a week after Thursday and the committee, based on the lists—given the authority, I could see if the members within this area could come to Toronto.

Mr. Chairman: By the way, that is a quite significant point; simultaneous translation I know can be moved in. It becomes much more expensive. A thought might be to move into a school facility, but I can immediately see problems with different boards and so on. Does anybody have any suggestions?

Mr. Jackson: The federal government has a variety of bilingually adapted public facilities from the convention centre, the old railway station, right the way through.

Mr. Chairman: There is the provincial congress centre too. They are close to each other.

Mr. Jackson: I would strongly recommend it. There is a new hotel right across the street from the old train station.

Clerk of the Committee: The problem with the hotel is its rooms are quite small. Since it is a very important bill in Ottawa, I can imagine there will be a lot of people.

Mr. Jackson: I agree with you. That is why I am suggesting that we—

Clerk of the Committee: I will certainly look around to see the best for us.

Mr. Jackson: I am specifically recommending the old train station. What is the other—

Clerk of the Committee: Which hotel?

Mr. Chairman: That is the federal one, that is the Ottawa Congress Centre. The other one is—

Mr. Jackson: I just want to get all this on the record. Because of the proximity to two hotels—

Mr. R. J. Johnston: Especially, if we are going to be running late.

Mr. Jackson: —if we are going to be two days and if we are going to pull—on Bill 30 we had this where we were going from nine in the morning until nine at night, and if that is required, we do not want to take another 25-minute ride to the hotel.

Mr. Chairman: If I might say, the congress centre is equally close. The congress centre is attached to the Westin Hotel and the one you described is over the road from it.

Mr. Jackson: Whichever.

Mr. Chairman: There are the two. OK, fine. In other words, that is the sort of ground we should be on, sort of neutral ground, I would say.

Mr. R. F. Johnston: Do we need a motion on Hansard or not?

Clerk of the Committee: Yes, you do. You will need approval from the Legislature.

Mr. R. F. Johnston moves that the proceedings be recorded by Hansard.
Motion agreed to.

Mr. Chairman: Are there any other things we need to move?

Mr. Jackson: Maybe not move. I am sorry, I had to step out for a second. Did we agree we were going to meet in Ottawa first and then here in terms of—

Mr. Chairman: The way it is going to be at the moment, as I understand it, is that we meet here for briefing purposes first.

Mr. Jackson: From the ministry?

Mr. Chairman: Yes. We then meet in Ottawa, but we are offering certain types of groups, province-wide groups, the option of meeting with us here, and I am assuming that is going to be afterwards.

1600

Mr. R. F. Johnston: I think it will depend on whether or not we can actually get the two days of Ottawa meetings together for the week following. If there are no logistical problems with that, then I presume we would be meeting any other groups afterwards. But if we cannot get that together and there are some province-wide groups that would like to come in and talk to us here on our regularly scheduled hours, we could work them in.

Mr. Jackson: No. From what I was informed, I thought we would hear from the ministry and then go to Ottawa. There are certain groups that will want to address the long-term implications of this bill, and to be fair, I think we should get down to Ottawa first. That was the point I thought I was hearing. When we get into the whole pooling and industrial-commercial assessment questions, we should fill our heads with that after we come back from Ottawa, not before. That is all I was trying to get established.

Mr. Chairman: By the way, that was my little interpretation. Is that the consensus?

Mr. R. F. Johnston: Sure.

Mr. Chairman: OK.

Mr. Jackson: My next question then would be, if we are going to block off two days, can we guesstimate a block of two days or get a feel for a Wednesday-Thursday or a Thursday-Friday? Can we get a sense of that before we leave? I have four or five items on every day, so I would like to get a sense of where I am.

Mr. Chairman: We are looking at the week after next, and the days—

Mr. R. F. Johnston: I do not know what I am doing tomorrow afternoon. Somebody will say that I do not know what I am doing right now, but I definitely do not know what I am doing tomorrow afternoon. I am going to have to go up and get my book if we are going to make this right now. It is just upstairs, only one floor up.

Mr. Chairman: The Board of Internal Economy does not meet until May 12, so that actually solves one of our problems. We are looking at after that date then, are we not, budget-wise?

Mr. Jackson: Not necessarily.

Mr. R. F. Johnston: We can probably try to get the budget approved afterwards, if the House leaders are all in agreement beforehand.

Mr. Chairman: OK.

Mr. R. F. Johnston: I would not worry about that. It is just that we have to be sure of that.

Clerk of the Committee: Yes, as long as we prepare the budget and it is passed by the committee before the board so that it has an idea of what it is. Logistically, the dates could be difficult to find accommodations and for the people to appear. Could I suggest that you give me a couple of days to contact these people and maybe have a subcommittee meeting on Tuesday or Wednesday of next week? I will have much more concrete decisions from the people and everybody else that the subcommittee can discuss.

Mr. Jackson: That is fair, but I would like to know now if we are looking at what is the preference for us, which is Monday-Tuesday or Thursday-Friday. That is really what I am asking. If you cannot be specific that it is going to be the first week of June or the last week of May, I can live with that, but I sure would like to know. If I have a constituency day and I am going to spend it all day in Ottawa, I would like to start to plan that now.

Mr. Chairman: Mr. Keyes, then Mr. Campbell.

Mr. Keyes: It is only a minor point. Remember, the holiday Monday, May 23, gives you a difficulty, so you may try to stay away from that week perhaps for your Ottawa visit, if you are doing two days, unless you are going to miss that day.

Mr. Jackson: Unless you want to do May 18 and 19 in Ottawa, and I can stay down there.

Mr. Keyes: If you can possibly do that soon.

Mr. Campbell: I would just try to raise a point. I am not claiming any special treatment, but I do have difficulty being away from home for four days. To add a fifth is tough on my family and so on. If consideration could be given to Monday through Thursday, I will be co-operative, but a Friday, if I could ask for some indulgence in this, because—

Mr. Chairman: The suggestion is Monday through Thursday and that we avoid Friday. Is that agreed?

Mr. R. F. Johnston: The major advantage of Tuesdays, of course, is that you miss caucus meetings.

Mr. Campbell: You would like to.

Mr. Chairman: I think we are going to have to have some flexibility here. There are a number of imponderables. Is there strong preference among Monday, Tuesday, Wednesday and Thursday from the committee? I realize there are specific problems.

Mr. Tatham: I am tied up on Wednesday.

Mr. Chairman: OK.

Mr. Campbell: Could we suggest that it is Monday, Tuesday, Wednesday or Thursday? We have caucus and we have other things that are beyond our control, but there have been precedents in getting excused. At the same time, I might suggest that we look at a preference of maybe Wednesday-Thursday first and then Monday-Tuesday or Tuesday-Wednesday in that combination. If that is fair, then we could get it straightened out.

Mr. R. F. Johnston: I guess at the moment we can look at those four days. I would like to get hear from the clerk what is actually possible and then see exactly where I can shift or not shift and whether that means replacements or whatever. I think that is the reality of how we are going to operate.

Mr. Jackson: There is a point that has not been raised, on behalf of the Liberal caucus, at least, anyway, about whether it is Monday and Tuesday or Wednesday and Thursday. I support the front or back end of the week because of the fact that the MPPs in the area could decide to stay or depart. If you do it Tuesday-Thursday, you have to fly out of Ottawa. I am thinking of Yvonne O'Neill and others. I mean, sure, Mrs. O'Neill will be present for these and will have to fly out, and back and forth, three times in the course of the week. We should be sensitive to that, not that that should be of paramount concern, but it is convenient to our colleagues.

Mr. Tatham: I wondered would it be, say, if you flew up Sunday night and came back Monday night and did it twice?

Mr. Chairman: You mean two successive Mondays?

Mr. Tatham: Is that a bad idea?

Mr. Campbell: Could I suggest that Wednesday-Thursday be our first choice, for all of those considerations? I do not think it will be impossible. I think we will be able to find it out. We may not be able to get the Ottawa Congress Centre, but you may have to meet in the—

Mr. Chairman: We are not looking for the main rooms in these centres, I assume. The suggestion is that Wednesday-Thursday is the preferable combination. OK. Can I ask just one more thing then, so we are thinking this thing through? If, in fact, it proves very difficult to set this thing up for the week after next, do I simply assume we go to the week after that?

Mr. Campbell: Yes.

Mr. Chairman: OK? Could I suggest then that a steering committee meet, let us say Monday or Tuesday—Tuesday, I think, preferably? We will go over some of the mechanics of this so that we at least have other input before Thursday's meeting.

Mr. Jackson: What time?

Mr. Chairman: It would be after routine proceedings.

Mr. Jackson: At 3:30?

Mr. Chairman: Yes. Is that OK with you, Richard, to meet in the clerk's office?

Mr. R. F. Johnston: You will send a reminder around, I know.

Clerk of the Committee: Yes, I will send a note.

Mr. Jackson: We are meeting May 10 and May 12?

Mr. Chairman: That is correct.

Mr. Jackson: The subcommittee is on May 10 and the committee is on May 12?

Mr. Chairman: That is right. Is there anything else we should discuss with regard to this matter?

You would like to speak to whether research should travel with us. Go ahead.

Mr. Garner: In the tradition of this committee in the past, for relatively short hearings like this, you have not required summaries. If the committee does wish summaries of the briefs that are before it, in terms of their recommendations on the actual bill, we would have to travel with you.

If you do not think you need that, then there is probably no need for a researcher to be along. You will not be doing a report at the end. It will just be right into clause by clause. So it is up to you.

Mr. Jackson: If you want to help write my amendments, we will be more than pleased to have you along.

Mr. Chairman: By the way, on that—and I was going to discuss it next time—on the question of amendments, as we are dealing with a bill which is clearly in both languages, should we assume that the amendments would be in both languages? There is a problem of translation, is there not?

Mr. Jackson: I will reiterate what has been stated by the two opposition parties. If the House leaders will agree to provide translation services to the opposition parties, as the government party has, then we would be more than willing to and, in fact, would love to, but we are just unable to under the current arrangements that we have.

I imagine that is an item that should be referred to the House leaders.

Mr. Chairman: OK.

Mr. R. F. Johnston: Somebody said that we are not going to take—

Mr. Chairman: No, we are still discussing it. Are there any comments on what Bob said?

Mr. R. F. Johnston: My sense is we will not need the compilation-style assistance from research on this. There may be need for other kinds of material that follow from this. I would love the company. It would definitely upgrade the quality of participation, I think, to no end.

Mr. Chairman: Any other comments?

Mr. Tatham: Is all this taped?

Mr. Chairman: Yes, we get the record.

Mr. R. F. Johnston: It goes in Hansard.

Mr. Chairman: I would assume that someone will do clippings and things like that? That would be done from here?

Mr. Garner: We can do, sure.

Mr. Chairman: I would assume we need that much. OK.

1610

Mr. Garner: If I may, Mr. Chairman. If you are in Ottawa for those couple of days, it is a lot faster for somebody with you. It would normally be us if we were, but if we are not, perhaps the clerk or members can divvy it up among yourselves to clip the local papers and get them back. We do get them in the library, of course, but there is a lag of a few days.

Mr. Chairman: We will see what we can do about that.

Mr. Garner: We can certainly do the Toronto papers here.

Mr. Chairman: Do we need to formally direct the clerk to prepare the budget for this matter?

Mr. Jackson: Yes. So moved.

Mr. Chairman: Those in favour? Agreed.

Is there anything else we need to do formally?

Mr. R. F. Johnston: There is one thing we have not resolved as yet. I guess it has to wait until Tuesday, the question of whether we do anything more public in terms of invitations than just going to the ministry's list. Are there other sorts of means we can come up with?

Mr. Campbell: In Ottawa or here or both?

Mr. R. F. Johnston: That is what we have to decide.

Mr. Chairman: Apart from the advertising, you mean?

Mr. R. F. Johnston: We have not as yet talked about whether we are going to advertise and how we would do it, how to reach the French community and how much we want the outside, in general, to come in on this.

My sense, for what it is worth, is that we should not do the sort of full daily advertising across the province on this one, that this is not warranted on this bill, that you have to wait for the feedback from the first contacts with these various groups. But I am a little concerned if we do not make the people of Ottawa feel that it is open to them to come, and not just pre-selected groups that may have had the good fortune to have participated in the consultation procedures in the past. I do not know how other members feel.

Mr. Jackson: Is the Roy commission open? Does anybody know? Could you check on that, clerk, for the subcommittee meeting and report?

Mr. Chairman: Can I suggest that we leave that until the steering committee? We will see what sort of thing the clerk comes up with, because I must say that I had envisioned advertising myself. From what has been said here, I envisage some open invitations in addition to the specific ones and that, therefore, we have to advertise.

Mr. Campbell: That is why we suggested we go the two days, I think, to get the maximum amount of participation possible. That was my understanding on going the two days.

Mr. Chairman: So this budget should include some suggested advertising, and addressing the problem that was raised--

Clerk of the Committee: To answer partially your question, the word is out there already. I have had a few inquiries as to what the committee's plans are. I told them we would meet and to please give me a call on Monday when I would have more information for them.

Mr. R. F. Johnston: My sense, though, is that we do need something in terms of French radio advertising. Maybe we could get a price or two on that because of the strike.

Mr. Chairman: Any other points to do with this matter? Any other business?

Mr. Jackson: Actually, I have talked with Mr. Johnston, and our House leaders have been apprised of this. Essentially, it was the recommended adjustments in the batting order for estimates. We have communicated to our House leaders. It was essentially the Ministry of Colleges and Universities, adjusting that to another time. The minister has been away and will be away a little further, I understand, although we are not sure exactly the week we may be called upon to start them.

We will be doing this bill first, so we probably are not going to get to the estimates until late June.

Mr. Campbell: I think part of the reason, too, is to take care of the government bill because of the priority and also because of some of the other difficulties we have already dealt with. I take it that is a fair order.

Mr. Jackson: I am content to leave it to the order of the House leaders.

Mr. Chairman: OK. Is there any other business? Then the meeting is closed. The steering committee meets on Tuesday and we meet again Thursday.

The committee adjourned at 4:15 p.m.

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Publication

S-11

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON

THURSDAY, MAY 12, 1988



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitutions:

Beer, Charles (York North L) for Mr. Tatham

Sterling, Norman W. (Carleton PC) for Mr. Cousens

Clerk: Carrozza, Franco

Staff:

Gardner, Dr. Robert J. L., Assistant Chief, Legislative Research Service

Witnesses:

From the Ministry of Education:

Carrier-Fraser, Mariette, Assistant Deputy Minister, Franco-Ontarian Education

Sass, Pierre Paul, Education Officer (Bilingual), Legislation Branch

Wolfish, Alan, Director, Legal Services, Legislation Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, May 12, 1988

The committee met at 3:31 p.m. in room 151.

ORGANISATION

ORGANIZATION

M. le Président: Mesdames et messieurs, bienvenue à la première réunion du Comité permanent des affaires sociales concernant le projet de loi 109, Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton.

La réunion d'aujourd'hui se déroulera principalement sous forme de séance d'information au sujet du projet de loi et sera tenue par le ministère de l'Éducation et le personnel du comité. Le comité tiendra des audiences publiques à Ottawa et à Toronto au cours des deux prochaines semaines. Ces audiences seront annoncées publiquement. Les personnes qui désireraient obtenir de plus amples renseignements peuvent composer les (416) 965-6834.

Ladies and gentlemen, welcome to the first meeting of the standing committee on social development dealing with Bill 109, an Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Today's meeting mainly takes the form of a briefing by the Ministry of Education and by committee staff on the bill itself. We will be holding public hearings in Ottawa and Toronto within the next couple of weeks. These will be advertised. Those interested in further details should phone (416) 965-6834.

Ladies and gentlemen of the committee, it seems to me, and I would accept your guidance on it, that first of all we have to consider the report of our subcommittee, which you have before you. Then, and in a sense as a part of that, we have to consider our budget. Then my understanding is we proceed to the briefing by the Ministry of Education. Is that reasonable?

If you would care to look at the report of our subcommittee, I can take you briefly through it and then someone should move that we accept it or whatever.

As far as the meetings here in Toronto are concerned, you will see it suggested that the first meeting will be today, which is today's meeting. If necessary, the briefings will continue on Monday. On Tuesday we may well continue briefings or, and I have heard rumours to this effect, be considering Bill 125 under special circumstances that day.

Our first public hearings will in fact be a week from today here in Toronto. It is my understanding that we already have a number of groups that are interested in appearing before us. Is that section reasonable?

As far as travel to Ottawa is concerned, we now have permission to travel while the House is sitting. I wrote requesting that particularly. The dates on which we will be in Ottawa are May 25 and May 26, the Wednesday and Thursday of Victoria Day week.

There has been some discussion as to whether we need two days or one day. I think to an extent that is still open. However, it does appear that the response to our initial inquiries has been quite large. It may well be that we need the two days.

It has been possible to make arrangements, although not easily, for those two days for the committee. We would, in fact, stay and hold the hearings at the Skyline Hotel. The Skyline has a large room which would accommodate the simultaneous translation equipment, ourselves and any delegations we can anticipate.

Mr. Sterling: I do not see why we need accommodation. I thought Yvonne O'Neill and Dalton were going to put up the committee.

Mr. R. F. Johnston: The rates would be too high.

Mr. Chairman: Perhaps Dalton and Yvonne would take that under advisement.

Advertising: When we began this process and when the subcommittee considered it, there was a problem in that Le Droit was on strike. It is my understanding that the strike is now finished. As a result, the clerk has made inquiries, and we can place advertisements in the English-language and French-language media. We need five days' notice for placing those advertisements. One thing we should consider here is whether the advertising should be in Ottawa only, should be province-wide or should be both. Before we go on to the budget, perhaps members would care to comment on that.

Mr. R. F. Johnston moves acceptance of the subcommittee's report, in order to have the debate.

Mr. R. F. Johnston: I think things are falling together as well as they can, given the limited amount of time we have before undertaking these initiatives. I would suggest, on the one matter, which may or may not be controversial, that where we advertise, the advertising admit, because we are holding the hearings in Ottawa, "shall be restricted to the Ottawa area." I think that was the presumption of the subcommittee as well, when we were meeting on it.

Mr. Chairman: If I might comment, if you look at the advertising which is attached, and we have the French —

Clerk of the Committee: I do not have the French here.

Mr. Chairman: We have the English versions of the proposed advertisements. It does mention that we are holding hearings here in Toronto, as we are. I would simply point that out to you. It means that groups could come either to Ottawa or to Toronto.

Mr. Sterling: I think there were a number of other bodies that were concerned about the constitutionality of the bill, that were outside of the Ottawa area; I think the Sudbury District Roman Catholic Separate School Board. Is the clerk going to write to all the boards of education, the teachers' professional organizations, basically the mailing list of the Ministry of Education in a general sense?

Mr. Chairman: Yvonne O'Neill first, then Sterling Campbell and then Dalton. Are your points pertinent to this?

Mrs. O'Neill: As most people know, we had a consultation document we took before we went to this legislation. There were about 30 groups involved in that experience, and about two thirds of those people have already responded. This whole process is very well known. The trustees' associations all know; in fact, they know the dates of the suggested hearings. So as far as ourselves advertising, I see no need. As far as if we want to notify the trustees' associations, the supervisory officers and the teachers' federations, I think that would certainly be in accordance with the way we handled the consultation document, but I think it would raise unnecessary complications to try to do a province-wide advertisement on this particular issue at this time.

Mr. Campbell: I think the important point here is that we agreed that we should go to Ottawa-Carleton. Obviously, the bill is, even in name, an Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton, and I think that is the focus of the kinds of things the delegations will speak to.

To go wider afield would take away, perhaps, from some of the kinds of things that should be dealt with in this bill particularly. I have no problem in travelling to Sudbury. Of course, I would like to be home and that sort of thing, but I think it is important that we keep the focus on. I do know that if the Roman Catholic board in Sudbury wishes to speak to this issue, it would be more than able to come to Toronto or Ottawa to discuss whatever it is, constitutionally or otherwise, that it may have to deliberate with. With the time frame we have, I think it is incumbent upon us to have a full hearing in Ottawa-Carleton and to have the number of delegations that propose to be before us and that we are able to accommodate them very well, as well as the one day of hearings in Toronto, and then perhaps determine after that if there are other places to go or to have delegations from.

1540

Mr. McGuinty: I have just a couple of nitpickers regarding the wording of the ad. I think we have the last—is this another topic?

Mr. Chairman: We might come back to that.

Mr. McGuinty: All right.

Mr. Chairman: Could we talk to a point? We agreed through the steering committee to approach the 30 or so groups that have approached and been involved in the communication with the ministry. This, I understand, we have done. We also asked members of the committee to suggest other names at that time. Is it your suggestion that we deliberately move to some other list, as well as advertising? The subcommittee is reporting on advertising generally.

Mr. Sterling: I think the bill is probably of interest to every school board in Ontario in some manner and they should be aware of when the hearings are taking place, so I would send it to every school board, both the Roman Catholic school boards and the public school boards. I think you are only talking, what, how many school boards are there, Yvonne, in Ontario?

Mrs. O'Neill: There are 170.

Mr. Sterling: No doubt you have the mailing list. I am sure the ministry could do it quite easily.

Mr. Villeneuve: If you cannot do that, I would certainly like to see the Stormont, Dundas and Glengarry County board, which is the adjoining board and has a fairly large element of French-speaking people, be aware and participate, because I think it is looking in that direction and would certainly like some guidance, based on what happens in Ottawa-Carleton.

Mr. Chairman: Could I ask then for other comment on the specific point? The specific point is that we advise some or all of the school boards in the province.

Mr. Beer: I would just agree that we should advise all school boards.

Mr. Chairman: Is there any objection to that?

Mr. R. F. Johnston: No objection, I think it is superfluous in that their associations all know about it very clearly at the moment, and I pick up the point made by the member for Stormont and those other counties that they need to be advised, as do people from Prescott, etc., but I have no problem if you want to do some mailing lists that are available.

Mrs. O'Neill: We have had this argument before anyway, Richard.

Mr. Chairman: The clerk would like to clarify something.

Clerk of the Committee: To clarify your question, Mr. Sterling, the list includes all the major boards involved and also the province-wide associations representing teachers, trustees and so forth. It also includes the boards—I know there is Sudbury—which were specifically interested, but if the committee wishes that I send letters, I will certainly do so.

Mr. Sterling: I think the only problem is that we are working in a short time frame. For people to know what time the hearings are actually taking place, what room they are in at the Skyline hotel, etc., then I think it would be worth the \$100 to send the letters out.

Mr. Chairman: OK. Can I take it from the committee's response that we are going to advise the school boards?

Mr. Campbell: Yes.

Interjection: Agreed.

Mr. Chairman: That is fine.

Now with regard to the advertising, you will notice there is one more thing, and that is that we have to insert a deadline for briefs to be received by the committee. I was wondering if something like the end of May would be appropriate there, if you look at the draft that you have. Is the end of May reasonable time?

Mr. R. F. Johnston: It is fine with me.

Mr. Campbell: When it says "the organizations wishing to comment" and "all briefs should be deposited," are you saying after the fact, given that the hearings will have already taken place, and it is clear that they understand the briefs have to be in after the fact?

Clerk of the Committee: That is where the deadlines would come in, Mr. Campbell.

Mr. Campbell: I just wanted to clarify that.

Mr. Chairman: I had also assumed that people could send in written briefs and that we would receive them by that date.

Mr. Campbell: Yes. OK.

Mr. Chairman: Is there any other discussion pertaining to the motion that we accept the subcommittee report? We will go on to the budget itself in a moment.

If I could point out then the item of the subcommittee report which is relevant to the budget, which we will be discussing, is that I be empowered to ask the Board of Internal Economy to approve the committee's budget very quickly and that in fact the letter I would write would say that we are going to go ahead unless we hear otherwise from them. Having said that—

Mr. McGuinty: Could I have a word on the wording of the ad?

Mr. Chairman: Yes.

Mr. McGuinty: All right, just a couple of minor points. In the last sentence, "request" should be plural and you are going to ask for consideration by the committee surely.

Mr. Chairman: OK.

Mr. McGuinty: If they start considering the committee we might be in trouble.

Mr. Chairman: Thank you, professor McGuinty. Having scored nine out of 10 on the advertisement. Richard, you had a question?

Mr. R. F. Johnston: On the budget matter, I think we best be careful that the Minister of Health (Mrs. Caplan) does not get wind of this, because if we start spending money without it being approved we could be in big trouble, à la Cambridge. I really think we have to be a little careful.

Mr. Chairman: Mr. Johnston has moved that the subcommittee report be accepted.

All those in favour?

All those opposed?

Motion agreed to.

Mr. Chairman: If you could look at the budget that is before you now. I do not have a copy. Are there any comments on it? There is also a sheet on the advertising.

Mr. R. F. Johnston: Franco, why do you not explain the rationale behind the number of weeks, etc?

Clerk of the Committee: If I may, the budget is for the whole year and it involves six weeks of meetings; three in the summer and three in the winter. Those are the expenditures for per diems, travel, meeting of the committee. Then you come to meals. Travel accommodation is for the travelling

of this committee to Ottawa. Then we have translation of documents and simultaneous interpretations to be used for Bill 109 for the committee. There is also a suggestion made by the subcommittee that if there are some individuals who cannot appear outside of either Ottawa or Sudbury and the committee wishes to hear from them, there should be some expenditures made.

Mr. Chairman: Ottawa or Toronto?

Clerk of the Committee: Ottawa or Toronto. The advertising is for the advertising of the bill that the chairman has spoken about and there is the radio advertising. The subcommittee felt that given the short notice that a way should be found to advertise within the Ottawa area. The best way to do that in a short period of time was the radio. We have chosen two radio stations in discussion with our agency of record, two French and two English stations that could have the messages in the area of Ottawa. If you notice, they have given a total for 30 seconds and for 60 seconds. The idea was to play perhaps one in English and one in French for let us say eight or 10 times in one day. These are for you to review.

Mr. Campbell: Given one of my previous careers in radio and television, I am concerned that the same kind of advertising coverage you would normally do in a newspaper is covered throughout the newspaper and while you are talking about vertical saturation, I think you might want to rethink this because the paper is back. Although I did make a pitch at the last meeting for electronic means, it was only to deal with the community comment kind of thing, rather than the paid advertising.

I really was looking at electronic media when in fact the print media would be on strike and I think that was an important point. However, in view of the time frame it might be expeditious to consult with the agency of record to make sure that this is proper coverage, so we do not just make a decision here and say, "This is the way we are going to do it." I do not think one day will do it. You have to design this thing so that it reaches the kind of audience you are looking at. I make that as a comment so that you will make sure we have some advice on placing those, if we decide to go ahead with it.

1550

Mr. R. F. Johnston: The major reason for using the radio was because there was a strike, which we clearly solved by the threat of our not having any advertising to put in it, and it was very helpful of us to do that.

Interjection: Absolutely.

Mr. R. F. Johnston: I am wondering at this stage whether we need to change our normal practice and put things on the radio or whether coverage in the Ottawa Citizen and Le Droit will be sufficient. Maybe the Ottawa members who are here will make a comment about that so we can have an idea if they think that is going to be adequate or not, given that the people who have been involved in consultation in the past are already sort of on a list to be seen and large numbers of them are coming out already. Just what kind of saturation do we need? I have other comments on the budget, but maybe we should stick with this first.

Mrs. O'Neill: I was not in on the choice of the stations. When we were doing the consultation document and Le Droit was on strike, I found that Radio-Canada was the channel French-speaking people in Ottawa-Carleton told me they would be using as the focus to get this information out, so I find the

choice of stations strange. I also wonder: All these stations have public announcements. They are not ads. They just say what is going on in town on any given day. There is no charge. Why do we not just use that now, and perhaps try to get an interview on CBC, both French and English, with our chairman or whoever, just to let people know this is happening? My thought at this moment is that we do not need to go into paid radio advertising. We have another way to get into that medium and we now have the two presses.

Mr. Campbell: For the information of the member for Ottawa-Rideau (Mrs. O'Neill), the reason these stations were selected, I expect, was that they have the highest listenership and not one particular type of listener. That may be the reason; I suspect that is the reason.

I agree the time is not now. The reason originally that we were going to get radio advertising was because the print medium in French was not available. It is now and I think we should stick with that.

My other comment, and I will repeat what I said before, is that I find it not fair to the electronic media to be constantly paying for ads in the print media and not paying for ads in the electronic media, yet expecting the electronic media to give us freebies. I think we should be adult enough in the world of advertising to know that if we are going to do it effectively like that, we do it that way and be fair to all media.

Mr. R. F. Johnston: I may be wrong about Ottawa in this, but in most areas we cannot give enough notice now for free advertising. Normally, there are three-week leads for that kind of community advertising anyway. I may be wrong about the Ottawa stations; I do not know.

Mr. Chairman: If I might comment myself, I do think the short notice is significant. It is a little different than if you have a lot of time. I do not know how we should proceed here. Is it sufficient that the clerk take this under advisement, consult again with the agency? We could try for Monday to come up with a new plan.

Mr. Campbell: Two of the three of us have agreed or at least have said we agreed that the print media were the problem. I do not want to put words in Mr. Johnston's mouth, but now that they are back in action, I thought I heard that the need was not there to go to electronic and that we can do the print media and get the advertising, especially with the notice we have to give of five days. We are going to be squeezing it to get the kind of coverage we want. I suggest respectfully that we make a decision now that this is what we do and then proceed, if that is agreeable to the other members of the committee.

Mr. Chairman: Would you move that then?

Mr. Campbell: I will move that.

Mr. Chairman: Mr. Campbell moves that we go with the print media.

Is there any further discussion of that?

Motion agreed to.

Mr. Chairman: Do you want to continue with the budget?

Clerk of the Committee: Yes, of course. First, I would like to state that these figures were taken from the budget of last year, which was very similar to this. We were planning for six weeks and this is what the basic guess is as to how much we would spend. You will notice that there is a possibility of a report, if the committee wishes; printing, which is what you have in front of you; Xeroxing and so forth. The other are fairly straightforward: postage, long distance telephone, transportation.

Mr. R. F. Johnston: I have a few things. The standing committee on social development was basically given an easy time of it last year because of our arduous life with Bill 30, Bill 94 and other bills prior to the last election. I think the six-week budget is probably light. Although it is always possible to go for supplementaries, I suggest the board tends to get a little worried about supplementaries later on. Since we are already planning to meet during the summer, we might be wiser to expect that we will be meeting more significantly in the winter break period, and therefore put in for a budget of eight or nine weeks, I would think, at this time. That would be my advice.

Mr. Chairman: The suggestion is we prorate this material for this longer period of time. Is there any comment on that? Is there any objection to that? Is this sufficient, to leave it at that?

Clerk of the Committee: Yes. Mr. Johnston, you would move, with the understanding that the clerk will adjust for two extra weeks or three extra weeks.

Mr. Chairman: Mr. Johnston moves that the budget be adopted as amended.

Motion agreed to.

Mr. Chairman: Is there any other business related, depending on the report of the subcommittee or related to the budget?

Mr. R. F. Johnston: No, since you have added to the subcommittee report the very substantial rumour that we will be dealing with Bill 125 next Tuesday, I do not think we really need to raise that further at the moment, except to say that if we are going to plan to deal with it that day, it would be wise that any of us who have names of groups that are particularly interested in talking to this committee around Bill 125 inform the clerk so that the clerk can advise those people to be here that day.

There are a number of amendments coming forward from the government and from the opposition critics, so a lot of our time will be spent talking about clause-by-clause. One of our past practices has been to use people as resources from time to time. If some of those groups that were of interest that members knew about were here and available, we could do one of two things: We could either call them to present, if they chose to, oral comments before us about the bill and proposed amendments, or we could just have them here as resources to us as we go through the bill and call them up at the direction of the committee.

I suggest the latter is probably adequate. Most of the groups probably do not need to make a presentation, but if any suggest they would like to, we could afford them a few minutes to do so before we get into our clause-by-clause deliberations.

Mr. Jackson: I would just add to that when we met today to discuss

these matters, there was some question about the five-day notice provision, which would have to be waived, and that would be required as a motion, which I would—

Mr. R. F. Johnston: In the House.

Clerk of the Committee: In the House.

Mr. Jackson: In the House. OK.

Clerk of the Committee: The minister will request that if he—

Mr. Jackson: The House leaders would do that.

Clerk of the Committee: Yes.

Mr. Jackson: But for the purposes of advising groups, we should be in a position to do that in advance and to tell them the five-day rule will be waived.

Clerk of the Committee: Yes, as soon as you can get it to—

Mr. Chairman: As it is now being discussed so openly, you saw it was in the subcommittee's report as a possibility. This strong rumour is that, in one day, we will be dealing with that bill and that the House will waive these various procedures in order that we can do that, so it is something we should be prepared for.

Mrs. LeBourdais: If I may go back to the advertising very briefly. It has been a number of years since I bought air time, but I am just wondering why the 60-second spots are all—

Mr. Chairman: We are going now with print media only.

Mrs. LeBourdais: I am sorry?

Mr. Chairman: Excuse me; I am sorry.

Mrs. LeBourdais: OK.

Mr. Chairman: Is that OK?

Mrs. LeBourdais: OK. The cost did not seem to add up.

Mr. Chairman: Are there any other organizational items for the committee?

1600

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON

Consideration of Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Etude du projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

Mr. Chairman: We will proceed to the briefing by the Ministry of Education. Mrs. Mariette Carrier-Fraser is assistant deputy minister, Franco-Ontarian education. Welcome. Mrs. Carrier-Fraser, I think you can see the name tags of most of the people. Charles, is that your name tag? This is Charles Beer.

Mrs. Carrier-Fraser: Oh, I know him. I already know his name.

Mr. Chairman: You know him. Can you see all the other names?

Mrs. Carrier-Fraser: Yes.

Mr. Chairman: Fine. Will you proceed with the statement and then I am sure the committee will ask questions.

Mrs. Carrier-Fraser: I think, first, that your research officer has prepared historical background for this session. I do not know whether it has been provided. I presume this is Bob Gardner.

Dr. Gardner: Yes.

Mr. R. F. Johnston: I had thought of applying under the freedom of information act to see if we could get it released, but I am told it may come forward at some point or other.

Mrs. Carrier-Fraser: I do not know whether Dr. Gardner wants to speak to give the general background for this bill or if he wants me to do it. We did not get a chance to meet.

Mr. Chairman: Perhaps I might suggest that you proceed and then Dr. Gardner has his report here. I think at the end, depending on the time, he will distribute it and speak to it. If there is not time, we can deal with it later.

Mr. R. F. Johnston: But we will distribute it?

Mr. Chairman: We will.

Mr. R. F. Johnston: Today?

Mr. Chairman: Today.

Mr. R. F. Johnston: Good. OK.

Mr. Beer: It will be in your mail box.

Mr. Chairman: At the end of the day. All right.

MINISTRY OF EDUCATION

Mrs. Carrier-Fraser: What I will do very quickly then is simply give you some background and then go into the bill itself. You all know the Roy committee report was submitted to the ministry back in 1986. We worked on it for a while and looked at the recommendations and prepared the consultation document—you have mentioned it in your discussions this afternoon—which was distributed in March.

We received input from several organizations. As a matter of fact, and

it can be distributed to the members later, I have a summary of the responses of the various groups, just a very brief one. Generally, what we did with the Ottawa-Carleton legislation was to look at the recommendations of the Roy committee. Some of them were taken and inserted into the legislation. Others, obviously, were not; because we felt uncomfortable about the constitutional dimensions which we felt we not addressed adequately within the document itself.

The bill, and I am sure all members have a copy of it, is a fairly lengthy one. It has 14 parts to it. The first part deals mainly with definitions, as all bills do. You have in here the definition of the board itself, "French-language instructional unit" and "French-speaking person," which are exactly the same ones you have in the Education Act.

I might raise the point here that several people have asked that we look again at the definition of "French-speaking person" to see if it cannot be expanded. We have a small group within the ministry, as a matter of fact, looking at it right now to see how we can expand it, and if we do, whether we negate the rights of francophones already in French-language schools. Basically, we are looking at it.

Mr. Sterling: Do you have a legal opinion on your "French-speaking person" definition?

Mrs. Carrier-Fraser: Not that I know of. We have worked on it with legal counsel and lawyers within the ministry and the Ministry of the Attorney General. That definition, when accepted within Bill 75, was worked on with the Attorney General's office, and it has been out in the field for two years now. As I say, people want it expanded.

Mr. Sterling: I guess I would like to know what it includes at this stage of the game.

Mrs. Carrier-Fraser: What it includes now?

Mr. Sterling: Yes. You see, the problem is I have heard—

Mr. Allen: On a point of order, Mr. Chairman: Are we getting into questions already or are we going to have a fairly complete presentation? I could get into that debate from the Bill 75 and the Charter of Rights angle and make some submissions on that too, but I do not think we want to get into that yet, do we?

Mr. Chairman: No. Is it something you can get a rapid reply to?

Mr. Sterling: I was just wondering if there is a legal opinion with regard to the definition used in this and in Bill 75. I would like to see a copy of the legal opinion.

Mr. Chairman: Could we leave it at that then? I think it would be better, unless members of the committee object, if we can proceed. I am sure if there are short points of clarification, you would not mind a question, but otherwise let us keep it at that.

Mrs. Carrier-Fraser: As I said, the first part deals with the definition of the board, "French-speaking person," "French-language instructional unit," etc.

Then you go into part I, which starts on page 6 of the bill. This part simply establishes the French-language school board for the Ottawa-Carleton region, giving it exclusive jurisdiction to offer French-as-a-first-language programs for French-speaking persons as defined within the first part of the bill and also ensuring that the English-language boards are the only ones offering English-language programs.

As I said, I will probably go very quickly, so you can ask questions at the end.

Part II, "Jurisdiction of Full Board and Sectors," starting on page 8, allocates jurisdiction to the full board, the public sector and the Roman Catholic sector. On this section, there were a lot of questions raised when the consultation document was distributed, because there was concern by the Roman Catholic community that there might be constitutional issues that were not adequately addressed and that were taking away the rights of the Roman Catholics.

We felt, and also through the Attorney General's office, that we had covered the items fairly well. Even right now, we are looking at possible changes so that maybe we can address it even more specifically.

The powers given to the sectors are listed from paragraph 1 to paragraph 29. The first 18, from 1 to 18, cannot be changed. They cannot be allocated back to the full board. They have to remain as the exclusive responsibility of the sectors. Paragraphs 19 to 29 are exclusive, but can be made common by double-majority votes. There are also clauses within this section that allow that if they find it is not working out, the responsibilities can be reallocated back to an exclusive jurisdiction after having been made common.

The issues that are included as being exclusive we felt were items that were essential to maintain the identity of Catholic schools, such as the teachers, the staff of the schools, the supervisory officers dealing with the schools and the programs. We felt those were essential and had to be maintained completely exclusive and not be made common at any time. We felt that protection was a very essential one to the identity of the system.

The matters that are the responsibility of the full board are administrative responsibilities basically, such as maintaining head office, maintenance of buildings, furniture and equipment, which are strictly administrative, and any other responsibility that might be given to the full board, starting from, as I said, 19 to 29 in the areas listed for jurisdiction purposes.

If we move on to page 16 of the bill, this part deals with school attendance and the persons who are qualified to attend a school operated by either the public sector or the Catholic sector of the French-language school board. Basically, the definition applies in this case with section 23 coming into effect: French-speaking persons as we have defined them within the Education Act and as repeated within this bill.

If pupils are qualified to attend a school operated by a separate school board and have French-language rights, then they would also qualify to attend the Catholic sector of the board, and vice versa. If they have French-speaking rights and want to attend the public sector, then they can.

Also, the French-language school board is given discretion, through an

admissions committee, to admit people who do not have charter rights. If there were citizens of the region who wanted their children to receive a French-as-a-first-language education but did not have a legal right, if you want, to attend, the admissions committee could accept students within either the public sector or the Catholic sector, depending on their qualifications. For instance, a Roman Catholic, non-French-speaking child could be admitted, based on the recommendation of the admissions committee, which is the normal admissions committee that we now have within the Education Act.

1610

Part IV deals with ratepayers and school support. That starts on page 26 of the bill: French-language School Support. In this case, it permits the ratepayers in the Ottawa-Carleton region to direct their municipal tax support to the public sector or to the Roman Catholic sector in the same manner that separate school supporters can direct their taxes to separate school boards.

In fact, in the Ottawa-Carleton area, what you would have is that a ratepayer could be a supporter of any one of the public school board, the separate school board, the public sector or the Catholic sector, depending on the rights they have.

Municipal property and business tax support of a corporation: In this case, what we have in the Education Act remains. Roman Catholic, it has to be a certain number of shareholders, then a certain amount of a corporation's taxes can be directed to the Catholic sector of that board if a certain number of shareholders also have French-language rights. Right now, as it stands in the Education Act, if a certain number of shareholders are Catholic, a certain amount of support can go to the Catholic board. In this case, if you had Catholic plus French-language rights, then a portion could go. It would have to be directed by the corporation. Generally, that is the way it stands. There are problems and people have raised questions on that one also.

Mr. Sterling: There is no way in this bill you can split within a family?

Mrs. Carrier-Fraser: No, and there is no way you can split within the Education Act as it stands right now. So we are respecting, in this bill, the provisions within the Education Act. Until changes are made within the whole financing of education in the province, the rules apply.

Mr. Sterling: It is a real problem with this.

Mrs. Carrier-Fraser: If I may request, Mr. Chairman, what I would like to do is ask Pierre Paul Sass from the legislation branch and Alan Wolfish if they would not mind coming forward if they feel they might be able to add something to what I am saying.

Mr. Chairman: Would you say those names again, more clearly?

Mrs. Carrier-Fraser: Pierre Paul Sass, from the legislation branch, and Alan Wolfish, who is one of the lawyers from our branch.

Part V, on page 34, identifies the electors to that board, people who have a right to vote for the French-language board. To be an elector, a person must have French-language rights, for one thing. Also, if a person is qualified to be a public school elector presently under the Education Act and has French-language rights, he can be a public school elector. Under the

Education Act right now, they have a right to elect separate school trustees, and if they have French-language rights, they can be a Catholic sector elector.

Part VI, page 38, deals with the duties and powers of the French-language board. In this case, the duties and powers that boards have generally across the province apply to this board. We have scholarships, vocational courses, allowances, of course, paying the trustees, things of that nature. They also have that authority and power to do so.

Part VII deals with board members' qualifications, resignations and vacancies. It is basically anything which we have within the Education Act. Trustees are elected to the sectors, not to the board. You have a certain number of trustees elected to the Roman Catholic sector and a certain number of trustees elected to the public sector, with the necessary qualifications, of course, and always with the caveat that they must have French-language rights.

Part VIII, from page 44 to page 56 in the bill, gives us the composition of the board, how it is calculated and how the members are distributed across the region.

You will note your description of the bill says, "The calculation and distribution...is...determined in the manner provided by Bill 76." This would have to be changed to indicate that this is related to Bill 125. It is basically the same principle that we are following.

The number of members of the French-language board is based on the number of persons, including supporters, electors and dependants. It will be based on the enumeration process, the people who were enumerated and identified with the new process in place right now.

Part IX, which goes from pages 56 to 64, addresses the financing of the new board. First of all, it indicates an auditor is to be appointed by agreement between the two sectors, and each sector will have its own estimates and its own financial statement.

The estimates and the expenditures of the full board are to be allocated to the sectors on a proportional basis, based on the average daily enrolment of the pupils in each sector. So the full board, all the trustees from the Catholic sector and the public sector, cannot set the mill rate or requisition. Their estimates are allocated to the sectors, and then the sectors can actually provide the funds for the full board to operate and to take care of its responsibilities as allocated.

We are looking presently at an amendment. In the Education Act, the separate school board is allowed to set its own mill rate and the public boards requisition the municipality. In this bill, what we had indicated would be to the sectors' requisition. What we are looking at right now is possibly proposing an amendment to this committee that would guarantee the same rights that separate school boards have presently to set the mill rate and the public sector to requisition.

It is an amendment that we are proposing.

Dr. Gardner: Subsection 39(2).

Mrs. Carrier-Fraser: Is it in already?

Dr. Gardner: Yes, it is in there already.

Mrs. Carrier-Fraser: I am sorry. That was a proposal that came through the consultation document, and we have not had time to include too many things, but this one has already been included. You see, I myself have not been able to keep up with the changes. I will let them chase it, because I am not sure if it is in or not. They will let me know.

The sectors share in the legislative grants and municipal grants in the same way as boards do across the province, the public sector as a divisional board and the Catholic sector as a separate school board. As indicated in the minister's statement, special temporary grants for the French-language school boards will be made available until the province makes a decision on the financing of elementary-secondary education across the province.

The understanding is that the funds to be made available would ensure that if the French-language pupils remain with the boards they are in now, they will get the same type of program and services within the new French-language school board.

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The estimate of the cost we cannot tell right now until we know the actual cost for programs or estimates for the boards for 1988, the existing four boards right now in that area, and the enumeration data, of course; until we know how many people actually opt to support the new board.

Mr. R. F. Johnston: Can we just get that said again? This is an area of major concern around the guarantee that there will not be less money for programs than there was last year, and the whole question of the timing of the enumeration. Can you go back and say again why you think that that guarantee is there? I really was not clear on that, the way you were expressing it.

Mr. Sterling: Is it in the act?

Mrs. Carrier-Fraser: No, it is not in the act.

Mr. Chairman: Could you start where you said that because, in fact, next year's estimates or expenses are not known? You started there, I think, and then you went on. Could you start at that point again?

Mrs. Carrier-Fraser: OK. Once we know the number of ratepayers who will support the new board, we will have at least an idea of the amount of support that new board will be getting.

Mr. Chairman: And the new enumeration form will give you that number?

Mrs. Carrier-Fraser: Yes. OK. That is why right now we cannot establish anything because we do not know. First of all, we will have to get this information. Once we have that type of information, then we will have to look at the estimated costs of the four existing boards right now, the costs that they say they would have to incur if the French-language students remained where they are, with the same type of programs that they are offering. Once the pupils transfer, the difference will have to be picked up by the ministry.

Mr. Chairman: So the idea is to go to that portion of English-language public, you would estimate the cost of that portion that

comes under this board, and that would be one component of the budget of this new outfit? Right? Mr. Sterling, is that OK? Is that what you wanted?

Mr. R. F. Johnston: We will come back to this later on because I am still not clear on how that guarantees the amount of money for programs being equal to that which is there presently, because the basis for determining how much money is going into those programs presently has nothing to do with the number of French electors. Right? We can come back to that.

Mrs. Carrier-Fraser: Part X, Teachers and Supervisory Officers. Each sector of the new board will appoint a director of education. This director will have the same responsibility as the person would have if he was within the separate school board or a board of education.

The full board then would appoint an executive director. That director would be chief executive officer for their area of exclusive jurisdiction for that full board. But that executive director has no authority over the directors of education for the two sectors. The public sectors and the Roman Catholic sectors, as are all boards, are allowed to hire supervisory officers, staff, etc.

Part XI of the bill, on page 68, deals with the resolution of disputes. Changes were made to this part right up to the last minute, and after the bill was introduced we started looking at it again, and we are not quite satisfied with its content. We are looking at it right now because what it does is it expands the membership of the Languages of Instruction Commission to a nine-member commission. But it gives them very little to do, except appoint mediators or appoint a chairman where there is a conflict and the parties cannot agree to the appointment of a chairperson. So we are looking at this section and, with the help of this committee, we will propose changes to it.

Part XII, pages 74 to 80, deals with the transfer of buildings and assets. Schools occupied by French-language pupils as of January 31, 1988 would transfer to the French-language school board. But there is flexibility as far as there were agreements after that date and the boards decide to transfer to another facility. There is the possibility in here to do so.

Also, this part of the bill provides for the existing boards in the Ottawa-Carleton area to determine, by a specific date within the legislation, which is August 31, 1988, as it stands right now, the other assets and reserves that could be transferred to the French-language school board.

This determination is to be of an equitable contribution. It is not defined per se because it was the recommendation of the four boards in that area that we leave them some flexibility. However, this determination, as far as what an equitable contribution would be, would have to be arrived at by the English-language trustees and the French-language trustees presently on the existing boards. It is not a decision made exclusively by a majority of the board.

A dispute in this case would then be referred to the Languages of Instruction Commission. If, after December 1988, the French-language board, once established, does not agree with the decision made, it can be referred to the commission as a dispute under part XI of this new bill.

The boards seem to be working things out right now. There is not total agreement.

Mr. Allen: As to what constitutes assets.

Mrs. Carrier-Fraser: Yes. As far as facilities, there has been very little discussion on that one. Schools have been identified that are occupied by French-language pupils. This is in the area specifically where you have boards where facilities are not being used, and also reserves are there or sites that are not clearly identified.

Mr. Allen: Administrative buildings and the equivalent portion thereof.

Mrs. Carrier-Fraser: Yes. They did not want us to be too legislative in this case. They wanted some room in the bill for local agreements.

Part XIII is a very long section of the bill that goes from page 80 to page 105. It deals with the transfer of staff, be they teachers, support staff or custodians.

This has been worked out very closely with the teachers' association and the unions in the Ottawa-Carleton area. There is built-in protection for all staff, basically. They developed, with the ministry, what should be included in here. There have been consultations, since the legislation has been introduced, with the various groups.

The staff, not just teachers, would be simply on assignment of service, if you want, to the new board from January 1 to August 31, 1989. The French-language board would reimburse the four existing boards for the services of staff and, in the meantime, start negotiations for new collective agreements or employment contracts, etc.

There is provision here for designation of employees, for employees to refuse transfers, for protection of employees, and also job protection. All collective agreements and employment contracts are transferred as they stand.

I myself met with teachers from the Ottawa-Carleton area two weeks ago and they are comfortable. They suggested some changes which we are considering right now and are preparing to bring forward as amendments to this section.

We also met with all union and nonunion representatives. Some employees are not protected by specific unions, but they are also aware of the whole bill. The part also has provisions for compensation, sick leave, gratuities upon leaving, seniority for transferred employees, etc.

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The last part of the bill, which is pages 106 to 113, gives protection, first of all, for the month of December, because really the French-language school board would not have responsibility for French-language programs until January 1, 1989. For the month of September we have built a provision into the bill that will ensure that during the month of December the four existing boards cannot make decisions that may affect French-language instruction without consultation with the French-language board until they start operation. There are other complementary amendments dealing with the Assessment Act, the Municipal Elections Act and the School Boards and Teachers Collective Negotiations Act.

Basically, that is a very quick overview of the bill. Just reading it

would take you much longer than that. Just trying to understand one chapter, as a matter of fact, would take much longer than that.

Mr. Chairman: Thank you, Mrs. Carrier-Fraser. I appreciate that. Are there any questions or points?

Mr. R. F. Johnston: Can we go back to the definition of the French-speaking elector, or French-speaking person, I guess, under the charter and just a couple of things you said? There is a concern of a number of people that people whose first language is neither English nor French or whose second language is French seem to fall into the cracks here and do not seem to have rights to elect people. Therefore, although they can participate, clearly, and their children can participate in the schools run by the French board, they as parents do not necessarily have any means of having a say in how that education is administered.

You said a couple things that interested me and that I would like to hear a bit more about. One is that you are looking at an attempt to include and expand—I presume for that group, but I was not sure—the definition. I wonder if you could talk a little bit about how you are looking at that in the context of what you said subsequently to that, which was that there is a concern that what you might do might derogate from the rights under the charter that are there presently for French-speaking people.

Mrs. Carrier-Fraser: First of all, if I can address just the last part of your comment, I do not think it would derogate. I know I said that and it was stated wrongly. It was just to ensure and to maintain the French identity of the school. We have to be careful about the number of students who are admitted whose first language is not French. Basically, that is what I meant for that part of it.

As far as expanding it is concerned, we are looking very carefully, first of all, at people coming from French-speaking countries, basically, and also parts of the world where most of their schooling is done in French. We have got some terms of reference. We have got some definition already that we are looking at, but we have not really stopped to see whether that is satisfactory or not. Really, we are only in the beginning stages of that one. It is impossible to change anything as far as the enumeration process right now is concerned, because that has already gone through, but there could be something done for later on to change the definition in the Education Act and then, of course, in this bill.

Mr. R. F. Johnston: That is what I was going to ask. For our purposes, then, you are not yet preparing this in terms of amendment to this act at this time, while we are going through the hearing process, but rather in terms of amending the Education Act and then Bill 77, which we have just passed, in terms of the enumeration, and then this, when it is finalized at a later date. Is that what I am understanding? Or are you saying that this is something you may be able to change for this act, and then we go back and change the other two acts, recognizing that it is not going to affect this first enumeration?

Mrs. Carrier-Foster: One thing that could be done, I would imagine, is that if the definition is changed, if a French-speaking person is redefined, it could be done by amending this also, but also amending the Education Act within in the same bill, because some clauses in here amend the

Education Act. So I would imagine so; but we would have to consult and find out whether that is possible or not.

Mr. Wolfish: The likelihood is that if such an amendment were forthcoming, it would be more down the road rather than immediate, owing to the time constraints and other exigencies. We are into the Education Act first.

Mr. R. F. Johnston: The Education Act first? OK. That is what I had presumed.

Is there a danger in opening the definition in terms of that then being considered discrimination against other groups, specifically the groups I am talking about, which may be, say, Vietnamese, or there are a number of other African groups where there are two languages. Often the language of instruction was French, but sometimes it was the other native language in their home country. That is slightly different from a person who has come from France. If you are thinking of extending it to include somebody who has come from France, is it likely still going to exclude these people who are in a second-language French situation but for whom English is a third or nonexistent language?

Mrs. Carrier-Fraser: Not necessarily. As I said, we are only in the preliminary stages on this one, but what we could do is look at how those people identify themselves on the census with Statistics Canada, because they might have identified them with their first language in Canada being French; that could be a possibility. But, as I said, we are only looking at various possibilities right now.

Mr. Allen: Just so I am clear, I must confess that all the language of section 23 in the charter is not exactly present in my mind, although I know the gist of it, and it does require that, to be eligible, a family whose first language was English, for example, in Canada might well have a child who went to a first-language French school and, by that token, become eligible for this. Now, if a Greek family had moved to France and their children took their second language but were in a first-language French school, obviously, in France and came to Canada, how would they be judged under section 23?

Mr. Sass: They would not qualify.

Mr. Allen: Not eligible, because the education was not in Canada.

Mr. Sass: It was not done in Canada.

Mr. Allen: So the governing factor is whether it was in Canada; it is not whether it was elementary first-language education.

Mrs. Carrier-Fraser: As it stands right now, yes.

Mr. Allen: I see.

Mrs. O'Neill: I just wanted to ask, has there been representation from various nationalities on this particular one? I know it has been brought forward by several associations, but have there been national groups that are now settled in Canada that have come forward?

Mrs. Carrier-Fraser: Yes. There has been a recommendation to the minister by l'Association multiculturelle francophone de l'Ontario, AMFO,

which represents various linguistic and ethnic groups, different French-language nationalities.

Mrs. O'Neill: The legal branch has just suggested that this is likely not possible for this election and would go into the Education Act first. Is there any possibility that if you do—and you say you are in preliminary discussions—develop criteria such as have been brought forward here that if the person had his own education in French and is French speaking now in this country, he could show some documentation, swear an affidavit and gain the right at this particular point, or is that not possible at all?

Mrs. Carrier-Fraser: First of all, there is nothing that prevents the school board from admitting those pupils, because they can be admitted through the admissions committee.

Mrs. O'Neill: No, I am talking about voting rights, which is what I have heard is the complaint here.

Mrs. Carrier-Fraser: OK. That has not been considered right now.

Mrs. O'Neill: Can anyone see a possibility of our being able to accelerate, because often we have to bring documentation forward when we are left off electoral rolls. I am just wondering if you are thinking along those lines.

Mrs. Carrier-Fraser: That is one thing we will have to determine, because we have not—

Mr. Chairman: Can I just clarify that? The board, or one of these sections, could admit a student, right? What we are discussing here is whether the parents of that student can in fact vote.

Mrs. O'Neill: No.

Mr. Chairman: They cannot.

Mrs. O'Neill: No, that is not what we are discussing.

Mr. Chairman: No? OK, could you clarify it, then?

Mrs. Carrier-Fraser: If one of those pupils is admitted to the school, automatically the parents gain the rights, because they become French-speaking persons as defined in the act. They probably are French speaking to start with—

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Mrs. O'Neill: The people we are talking about now—

Mrs. Carrier-Fraser: —but I mean that under our definition they gain charter rights and then they gain also the possibility to become electors.

Mrs. O'Neill: Maybe Mr. Johnston wants to explain the people he is talking to. It is not the people who have kids in the schools we are talking about.

Mrs. Carrier-Fraser: No.

Mr. R. F. Johnston: They do want to get their kids into the schools, but the board may decide not to admit the child, and then you do not get that status. Once your child is admitted, then you get the status Mr. Allen asked or—

Mrs. O'Neill: Or they can be single people, people who are senior citizens. These people are disfranchised at this moment to vote for those people they feel closest to.

Mrs. Carrier-Fraser: Because they do not have a legal right as it stands right now.

Mr. Chairman: Can I ask one more thing? When somebody is admitted to one of these boards, then—let us say it is a senior citizen—do his taxes follow him?

Mrs. Carrier-Fraser: If a child is admitted—

Mr. Chairman: Mrs. O'Neill mentioned senior citizens—

Mrs. O'Neill: I am sorry. I will try to clarify what Mr. Adams is getting at. His taxes can be designated to the French-language board if he is qualified to be a French-language elector; those two things. But we now have had a focus brought on a group of people who cannot exercise a right they may want to exercise, simply because they either are not Canadian French-language educated or do not have children in the schools that are French-language schools. At this moment, the Charter of Rights grants the franchise only to those two groups of people. We have another group, and I have no idea how large its number is—maybe you do—which has made representation to us that it feels disfranchised.

Mr. Chairman: I think that is much clearer, and I am glad I asked the question.

Mr. Beer: We are delighted you asked the question.

Mrs. Carrier-Fraser: But there is no answer.

Mr. R. F. Johnston: Could I just go on to another point you made which interested me, mostly because of our Bill 30 experience. In fact, whenever I see you I cannot help thinking of our Ottawa hearings with Bill 30, but I will go no further than to say that that was a particularly entertaining evening of representations we had that night. I do see things actually through this bill in terms of—

Mr. Beer: For those of us who were not there, that may be a bit misleading.

Mr. R. F. Johnston: Deliberately so.

Mrs. Carrier-Fraser: And completely innocent. I was there.

Mr. R. F. Johnston: Unfortunately, completely innocent.

Mr. Beer: Oh, well.

Mr. R. F. Johnston: I was deliberately misleading.

I do see things in this act which are lessons learned from our experience with Bill 30, particularly in terms of the staff side of things. That does seem to be nice and clear. But you said something, which intrigued me a little, about some of the concerns raised by people like the Sudbury separate board and others around the question of the possible infringements of the Catholic rights of education. You said you were looking at some potential extra clarifications to those which are presently in the act, and I wonder if you could direct me more specifically to where you are looking at that and why. It would be helpful.

Mr. Sass: Subsection 45(2). I think that is what Mrs. Carrier-Fraser was talking about.

Mrs. Carrier-Fraser: First of all, when I mentioned that the separate school board has the authority to levy taxes and that the public board requisitions—and I was not sure whether we have included it—it is part of the bill now. It is in, as I said, section 45. If we deal with the jurisdiction dimension—

Mr. R. F. Johnston: It was actually before that, yes.

Mrs. Carrier-Fraser: Yes. On the jurisdiction, what I was concerned about myself is the "religious instruction" in part II, paragraph 4(1)6, on page 8. "Religious instruction" deals basically, in our Education Act, with public schools, granting them the right for opening exercises and also half-hour periods during the week. With separate school boards, the religious education dimension is just totally different from the religious instruction as within the public school.

We will be recommending that this be changed, that "religious instruction" apply to the public sector of the board but that the Catholic sector have the same rights it has in the Education Act—I do not remember which part it was in the Education Act—which gives it religious education rights with credits in grades 9 and 10, etc., because I felt this did not address the issue of religious education properly for the Catholic or the public sector. It should be removed from there.

Mrs. O'Neill: What section is this?

Mrs. Carrier-Fraser: It is page 8, paragraph 4(1)6 at the bottom of the page.

Mr. Chairman: "Religious instruction and visitors to schools."

Mrs. Carrier-Fraser: In the Education Act a separate school board may establish and maintain programs and courses of study in religious education for pupils in all schools under its jurisdiction. We felt it was essential that it be part of this, that Catholic schools should maintain that right.

Mr. R. F. Johnston: I think that would be helpful actually, if we have—

Mr. Allen: That could come under regulation 62.

Mrs. Carrier-Fraser: Yes, rather than simply saying "religious

instruction," which then applies to both. It does not have the same meaning for both.

Mr. R. F. Johnston: I think that would be very helpful. That is all I would like to ask right at the moment.

Mr. Allen: In that connection, though, if I remember the Roy report, in terms of the jurisdictional question, it intended to allow that to be settled by the boards themselves on a double-majority basis. That, I guess, did not really satisfy the requirement in advance with regard to the constitutionality of who was doing what and who would be assured what. Was that the reason you decided to move to a much stricter definition of what could be included in whose jurisdiction?

Mrs. Carrier-Fraser: Yes. We wanted to ensure that the rights of the Catholic population to a Catholic education and the protection as far as programs and staff and everything were concerned are maintained and protected and cannot be changed, because it is a right that has been acquired. We did not want anyone to have the possibility of even playing with that, so it has been made exclusive and cannot be made common at any time. It is protected within the act.

Mr. Allen: I was rather worried about that provision in the Roy report.

Mrs. Carrier-Fraser: The provision in the report also left everything—the total board would have to decide and start allocating responsibilities, and we were a little concerned that it might take two years before it actually started operating anything.

Mr. Allen: If ever.

Mrs. Carrier-Fraser: There is a real concern, because it takes a long time to allocate responsibilities. We did not think it would be fair to say, "OK, now you start operating and you start deciding who is going to do what to whom." We felt it would be clearer if we stated that in the act.

Mr. Beer: I would just like to ask some questions with respect to part XI, "Resolution of Disputes."

Mr. Chairman: Would you give us a page number?

Mr. Beer: Page 68, sections 54 on to 60.

What you were saying is that, as set out in section 54, if there is a dispute, then that would go to the Languages of Instruction Commission of Ontario. Could you go back over the concerns you have about the role of the commission here? You were saying that you felt the commission would not have enough to do.

Mrs. Carrier-Fraser: I will let the people from this group address this question.

Mr. Beer: The reason I want to zero in on that is that I recall the Symons report, when for the first time the appeal procedure was built in. I think one of the lessons out of that was that it was awfully critical to make sure that both the right of appeal to the disputes commission, whatever it was called, and how that procedure would work were got right the first time,

because of the nature of the disputes that were going there. I would just be interested in what it is that you still think is not here and needs to be built in.

Mrs. Carrier-Fraser: The languages of instruction commission has five members presently. They deal with problems submitted to them by minority-language groups or minority-language sections of the boards, etc., right now. What we have done in this case is to expand the membership to nine.

First of all, when there are disputes, between a French-language board and an English-language board, for instance, or a Catholic sector of the French-language board and a separate school board, that type of thing, there is provision that they can resolve the problem locally between the two of them. One party can appoint a person, the other party can appoint somebody else, they can agree on a chairman. If they have resolved the issue at the local level—

Is that the way it works? Mr. Sass seems to be shaking his head. OK, go ahead.

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Mr. Sass: They can appoint a mediator locally, and if that does not work or if they cannot agree on a mediator, they can appeal to the commission to name a mediator. The mediator, whoever he or she is, then reports back to the commission on whether there is an agreement or not, within, I think, 21 days or 30 days.

Then if there is an agreement, there is no problem. If there is still disagreement, then the commission has to—this is where we start differing between what is in the act right now and what we are envisaging as being finally in the act, with your help, through an amendment.

What we are currently contemplating is some mechanism whereby the Languages of Instruction Commission of Ontario itself would be granted the full decisional power to solve the dispute. In other words, the Languages of Instruction Commission would investigate the issue, read the report of the mediator, hold hearings and so on and so forth, and then render a final decision which would be binding and final upon the parties.

Mr. Beer: Is one of the things you are wondering about in that whether you need that many more members as well, in terms of what you are anticipating is going to come from this legislation in terms of appeals? What was the justification, the rationale, for going from five to nine?

Mrs. Carrier-Fraser: We wanted to ensure, first of all, better representation from French, English and Catholic public school supporters, things of that nature, and with five—also, there is always the geographic representation and everything else. It is more adequate representation, first of all, with nine members.

Also, if you are dealing strictly with French-language disputes, then only the French members of the commission would deal with them. If it is dealing between French and English, then you would have a combination of members dealing with problems.

Mr. Beer: So some of the reason for expanding the size of the commission at this time is not simply this bill, but other disputes or

experience to date?

Mrs. Carrier-Fraser: That is something we want to do later on also, because with minority French-language sections and boards and everything else, as long as there are minorities, there will probably continue to be disputes that will need to be resolved.

Mr. Beer: Just as a matter of interest, over the last four or five years has there been a noticeable increase in appeals to the commission?

Mrs. Carrier-Fraser: No. There was for a period of time and then it slowed down, because with Bill 75, until everybody got adjusted and knew what everybody was doing, they have not had much chance to refer anything to the Languages of Instruction Commission.

Mr. Allan: I would like to pursue that point a little farther. Perhaps you would remind us about the nature of appeals in other respects under the Education Act. I know we are all painfully aware that under Bill 30 there is an option for school transfers for appeals to cabinet, finally. Why is there not that ultimate appeal in this case? Is that not usual for disputes that arise within school boards, while Bill 30 deals with disputes between school boards, or is there some rational explanation of why there is not a final appeal to cabinet here? If you could explain all that to me, I would appreciate it.

Mrs. Carrier-Fraser: The Languages of Instruction Commission, as it stands right now, simply makes recommendations to the boards. If the boards refuse, they indicate that they will refuse and give the reasons that they are not acting on the recommendation of the commission. Then it is the minister's decision to order the board to do things.

What we are doing in this case, what we are recommending as the final decision is not part of the bill as it stands right now, but we feel the final decision should be the Languages of Instruction Commission and then it stops there. Whether that is going to be something that we will recommend to you or not is something we are looking at.

Mr. Allen: The analogous body in Bill 30 would be the planning and implementation commission, I guess, and yet we do not allow issues to stop at the PIC, mediation and arbitration goes ahead and then after the arbitration there is another appeal. I am just trying to understand why there is no appeal beyond the arbitration in this case under part XI.

Mrs. Carrier-Fraser: In part XI right now, it does not stop at the commission, or does it?

Mr. Allen: In subsection 59(12), "The arbitration board's decision is final and binding," and—

Mr. Wolfish: That does not preclude an application for judicial review, so the matter can still go before the courts. If we are going to have a process, it is best that we eliminate as many steps as possible prior to court, if the ultimate destination is, in fact, court.

Mr. Allen: The judicial review is really only on matters where there has been a technical breach of the law or something of that matter, rather than other substantial issues. If the other substantial issues are not resolved previously to the satisfaction of the parties, and there is some

other kind of matter at hand, other than a judicial technicality, I am not sure that I understand why the matter should stop with the commission and not go on to the cabinet for a final and ultimate determination.

Mr. Wolfish: I am not certain I would agree fully that an application for judicial review is restricted simply to technicalities. There are fences around it, certainly.

Mr. Allen: But matters of law that have been breached in the course of what has preceded.

Mr. Wolfish: Yes, matters of jurisdiction, matters of allegations of bias, and so forth. That is true.

Mr. R. F. Johnston: This strikes me as interesting to see what comes forth, because we have often placed a fairly high value on the ministerial role in these kinds of matters. On this particular piece of legislation, there is no buck-stopping with the elected minister responsible; at least, there does not seem to be.

Mrs. Carrier-Fraser: No, there is not.

Mr. R. F. Johnston: That is interesting. I think we are just trying to find out the rationale behind this. Often, in other cases, such as the Education Relations Commission or whatever, the minister still has a role that can be exercised. It does not seem to be part of this.

Mrs. Carrier-Fraser: It was felt, possibly, that the problem would be solved more quickly this way than by having to go through too many steps. In this case, the commission decides. Then, if they are still not satisfied, they apply to the courts.

Mr. Beer: I will just comment that I think we want to think pretty long and hard about that, as to how you set out those steps. I appreciate the argument, but there are some other factors there that perhaps, as we get more into it and deal with some of the other proposed changes, we may want to consider. I can remember very similar discussions at the time of the Symons report. I just want to note that for the record.

Mr. Chairman: I think the purpose of this afternoon and of any further reading we have is for the committee to get those things fairly clear in its mind so we can address them in the hearings and so on.

Mr. Jackson: Briefly, on the issue of property transfer, Bill 30 makes reference to lease. We are silent on that in this bill, unless I am misreading it. Is there a reason for that?

Mrs. Carrier-Fraser: Through talking with the boards over there, basically there was a general acceptance that the facilities presently occupied by French-language kids should, by rights, go to the French-language board. Also, I think most of the boards have already identified the schools and they know which schools are going. It did not seem to be an issue, as far as the transfer of buildings presently occupied by French-language children. That is why the lease approach was not used.

Mrs. O'Neill: These will be electors who will be using the facilities, basically, or the students of electors. It is a new kind of designation. It is very different from what Bill 30 would do, where you have

one set of electors dealing with another set of electors, not necessarily the same students. In other words, the public board may have to lease a facility on a term basis to separate schools. This is different, in that the people who will be using the school are the children or students for whom the electors who will be supporting the school are responsible. It is much more clear-cut.

Mr. Jackson: I have just one quick question. My understanding is that in part of the Bill 30 negotiations between the public and separate board in the area, there was some reference to the sharing or leasing of one of the schools there that was designated, should in fact a French-language school board be established in the Ottawa-Carleton. Am I misinformed in that regard? I have not done all my homework on it.

I thought there was some reference in the fact that, should the school revert back to the public board, it could only then be directed to the public francophone board. Is there such a situation in the Ottawa-Carleton area?

1700

Mrs. Carrier-Fraser: Not as far as I know.

Mrs. O'Neill: There is one lease arrangement at the present time.

Mr. Jackson: Which refers to—

Mrs. O'Neill: Belcourt is the school that is under lease at the present time, but that negotiation process is not over yet. I think this bill is very clear and I think this is what the community would like as the ideal. So the lease arrangement will have to be worked out among the four boards. That particular school is the only one that I know that is under lease at the present time.

Mrs. Carrier-Fraser: And that one is not an automatic transfer.

Mr. Jackson: That is what I thought.

Mrs. Carrier-Fraser: No. That one is not automatic, because it is not owned by the board presently occupying the facilities anyway. Belcourt is occupied by French-language pupils from the separate school board, and Belcourt is owned by the public board. So in this case there would have to be negotiations. It is not taking Belcourt and transferring it to the board.

Mr. Jackson: Perhaps when we are in Ottawa we will be receiving presentations about that specific school. I will leave my question at that point.

Mrs. O'Neill: I just hope we will not. I hope everything will be solved by then. I am always optimistic.

Mr. Jackson: You should be around here a little while longer.

Mrs. O'Neill: No, I am always optimistic.

Mr. Jackson: So was I when I first arrived.

Mrs. O'Neill: I have lived in Ottawa a lot longer, though.

Mr. Jackson: I worked on Bill 30 for a year and a half.

Mr. Allen: I have lived in Ottawa and worked on Bill 30.

Mr. Beer: You are in big trouble.

Mr. Jackson: Excedrin headache two.

Mrs. Carrier-Fraser: If I may just add something before Mr. Allen's comments, in this case the school occupied by children of public school supporters would remain within the responsibility of the public sector. They are owned by the total board but they are still using the facilities, and they cannot be transferred back and forth unless there is agreement between both sectors.

Mr. Allen: The overall sense is that there is not displacement and replacement of pupils and that kind of thing, so this makes it a much simpler issue than ever was contemplated under Bill 30. That is why the provisions of Bill 30 are somewhat more elaborate and try to look down the road and allow for certain options and flexibility in the future, etc., all of which I think made a good deal of sense.

Could I come back to the question my colleague was asking a little earlier with respect to the financial resources available to the French board? He suggested there might well be additional enrolments from numbers of students who might not be formally eligible, but because of their background, education and so on, they might well be allowed into the system on discretionary grounds, swelling the numbers, obviously, beyond the number of electors; and also students who would not have been calculated in the formula that you would apply, I expect, on the separate boards, in terms of calculating how many of X students who are now under the French board but had been under those other jurisdictions would cost in those other jurisdictions, to get your global cost figure and then to figure out the gap.

These new, additional students would obviously be cost factors. They would not be calculated at those originating board ends and they would not be accounted for in your electoral base either, so how would they be paid for?

Mrs. Carrier-Fraser: If their parents cannot support the French-language school board, they have to pay taxes somewhere, and the schools would still be open for those pupils of French-language schools. The board where the parents are paying taxes would have to pay fees.

Mr. Allen: This would be just a straight transfer.

Mrs. Carrier-Fraser: Yes. They would have to pay fees based on the actual—

Mr. Allen: Even though they were not counted in the student base, at the moment of registration they would be in that base anyway and the money would come across.

Mrs. Carrier-Fraser: Yes, as most boards do now through purchase of service. If they do not offer the program, they purchase it from another board, and there is a fee paid by the purchasing board. So there is revenue there.

Mrs. O'Neill: There is a lot of that going on in Ottawa at this moment.

Mrs. Carrier-Fraser: And it covers the cost of the program because it is a per pupil cost. What they do is take the total cost of the program, divide it by the number and then arrive at a figure, and it is a standard fee across the board.

Mr. Allen: Is the ministry committed to making up that funding gap that you talked about earlier over the long haul and until such time as the issues of educational finance that you again alluded to that are not presently resolved are in fact resolved? Do I make myself clear?

Mrs. Carrier-Fraser: Yes, that was part of the ministry's statement. There was a commitment made by the minister when he introduced the bill in the House that special temporary grants would be made available until such time as final decisions are made on the financing of elementary and secondary education. That is why there is no time limit. There is no time commitment on this one because we do not know the amount of time it is going to take.

Mr. Allen: OK, as long as we are perfectly clear on that. I remember the language now that you mention it, but it just slipped my mind.

Coming back to the property and assets question, do you have a sense of how long it will be before the other asset items will be negotiated out and there will be a conclusion on that matter with regard to equity and board administration buildings and other kinds of real properties that may attach to the system that students might have had access to but that are not part of the formal school proper?

Mrs. Carrier-Fraser: It is being proposed in the bill that the board would have to reach an agreement. They shall determine by August 31, 1988. So provided the legislation is passed before then, everything within that date remains. The board would have to determine by that time the assets and the reserves that are to be transferred.

Mr. Sass: There are two sections in the bill that come into force on the date the bill was introduced in the House and that is one of the sections. Forthwith after the introduction of this bill in the House they have to start negotiating this agreement and achieve an agreement by August 31. Right now, that section of the bill is in force.

Mr. Allen: Are there any major difficulties that are being encountered in those negotiations at this point that you are aware of and can tell us about?

Mrs. Carrier-Fraser: Probably the most difficult situation will be where boards own, as I said, facilities that are not occupied presently, but where the French-language community has contributed through tax support and everything else over the years. It is mostly boards where a lot of schools have been closed over the last few years because of low enrolment, likely probably within the Ottawa area more than the Carleton area, because Carleton is expanding, so there are very few sites or facilities which are empty.

As far as the reserves are concerned, I know some agreements have already been reached by some boards on that one. I think Ottawa separate as a matter of fact has looked at its reserves and it has already decided which part would go to the board once it is established.

Mr. Allen: Could you give us some sense of the range of properties and assets that are at issue? For example, are there outdoor education

facilities in the Gatineau that the boards own and therefore there might be considered some equity from them?

Mrs. Carrier-Fraser: No, I am not sure.

Mr. Allen: It would be interesting I think for us—at least maybe when we are in Ottawa we will learn that quite directly I suppose.

Mr. Chairman: It seems to me we will. Any other questions or points?

Mrs. O'Neill: I just may add, though, that it may not be easy for us to get that information, simply because this negotiation is going on between two panels of a school board. At this moment I think they have every right to keep those negotiations confidential and that is what they are doing. Once an agreement is reached—and sometimes we are hearing a few agreements—but we gave them until August 31. I think they should be given the freedom to do that.

It is a very difficult decision, where they have to have their fingers on the pulse of their communities, and I trust that they are the best people to do that. So, if we cannot, I would not want to raise false hopes that we could get a list of what they are negotiating, because I think that may be an infringement on the process. I just say that with due respect.

Mr. Allen: I would not want to interfere with the process, Mr. Chairman. I think that would not be proper and I do not think any of us would want to use this committee to resolve those issues on behalf of either of those parties. That would just make things much more complicated.

I do not think it would hurt for us to have a sense of the range of properties being discussed or the assets being discussed, simply to know the scale of the issue rather than any intent to be involved in the matter itself.

1710

Mrs. O'Neill: Maybe that can be provided.

Mr. McGuinty: On the same point, we are looking at one of the specifics that, it seems to me, may cause some tension in the Ottawa area. Subsection 61(8), on page 76, states, "the school sites transferred to the French-language board by the Ottawa Board of Education or the Carleton Board of Education shall be allocated to the public sector and the school sites transferred to the French-language board by the Ottawa Roman Catholic Separate School Board or the Carleton Roman Catholic School Board shall be allocated to the Roman Catholic sector."

In the practical order it would appear that the quality of the facilities to be transferred respectively would be quite different. I am wondering what the logic was for setting them up in that way. I think, for example, that what will be transferred from the OBE and the Carleton board will be very adequate secondary schools, whereas what will be transferred from the Roman Catholic separate school board or the Carleton Roman Catholic board will be elementary facilities.

Mrs. Carrier-Fraser: The understanding with the boards was that the schools presently being used would be transferred as they stand. So all the elementary Carleton separate schools occupied by French-language pupils in Carleton would be transferred to the Catholic sector, would be allocated to the Catholic sector.

Mr. Chairman: The only complication is where there is a mixture of those in the present use of the facility. There was the example you gave before. It was perhaps a separate school occupied by a French-speaking unit of the public board, I think.

Mrs. Carrier-Fraser: Yes. There are negotiations going on between the two boards presently, though, within Ottawa, as far as the use of facilities is concerned, so they will come to an agreement before too long. We cannot predict what the outcome of the negotiations is going to be. The same thing with Carleton right now. The two Carleton boards are in negotiations as far as secondary school facilities for French-language pupils are concerned.

Mr. Chairman: But otherwise, it is as here?

Mrs. Carrier-Fraser: Yes.

Mrs. O'Neill: It is as here. It will continue to be that. The difference is that concurrent with our studying of this bill are the negotiations for the Bill 30 facilities transfers that will take place either January 1, August 30 or next year. There was one that happened this week, which Mrs. Carrier-Fraser has just mentioned: Ecole secondaire Garneau will go now to the separate school board of Carleton. The negotiations in Ottawa are still going on. One major school has been transferred there this year as well: Ecole secondaire André Laurendeau.

So there are concurrent things going on here, and this makes this much more complicated than it would normally be, of course. But we are again sure that we can overcome these complications. But what I am saying is that today may not be exactly the way this bill falls out when the negotiations are all completed on facilities regarding Bill 30.

Mr. Chairman: OK. I am glad I asked the question.

Mr. McGuinty: I think it might be useful for our colleagues who are not from the Ottawa area if a little paper could be provided to them giving a bit of general background along the lines of what you have suggested, giving what is going on, for example, in the different but not unrelated area—that is, the implications of Bill 30 regarding the negotiations between boards or schools—and the other aspects of this transfer of facilities. I think those of us who have been there for a long time and served on boards (inaudible) committee and perhaps even hypersensitive to it. It might be useful for our colleagues to have that background.

Mr. Chairman: There is some material in here and, of course, we do have some historical background which you will be receiving later.

Mr. McGuinty: Yes.

Mrs. Carrier-Fraser: It will be very simple. Really, when you look at it, there are only two French-language secondary schools within the Carleton area and only five within the Ottawa area, so it is fairly simple to let you know which is being used and by whom. I am sure we can provide you with that information.

Mr. Chairman: I would say, Mr. McGuinty, that I have read some stuff and I am actually clearer than it might appear. I simply asked the questions because of the way the discussion was going. I do not want to appear completely ignorant on these points.

Mr. McGuinty: I was not implying that you were unclear, Mr. Chairman.

Mr. Chairman: Thank you very much. I am delighted.

Mr. Beer: You might want to stress that we feel we have a clear chairman.

Mrs. O'Neill: You are even starting to claim questions as yours that were actually somebody else's.

Mr. Chairman: Are there any other points, clarifying or otherwise?

Mrs. Carrier-Fraser and colleagues, Mr. Sass and Mr. Wolfish, we thank you very much. It has been a very useful briefing for us. It gives us a very good start on dealing with this bill. Is there anything you would like to say, Mrs. Carrier-Fraser?

Mrs. Carrier-Fraser: Yes. I may add also that if questions arise during the hearings or anything else, there will be members from the ministry taking part or attending the hearings. Also, Maurice Lamontagne, who has not sat down with us, has been really l'intermédiaire between the Ministry of Education and the two committees in Ottawa-Carleton, the planning committee and the impact committee. He has attended the sessions, so he has a good sense of what has been happening in the Ottawa-Carleton area. I have not asked him to come to the table, because he has been taking copious notes, but he also has background information on what is going on in Ottawa-Carleton.

M. le Président: Je vous remercie tous. C'était très utile.

I think it was very useful. I think, by the way, the committee will progress very quickly during the coming days, and we are looking forward to it. It is going to be very interesting. Thank you very much indeed. We appreciate it.

Ladies and gentlemen of the committee, might I suggest, then: Bob Gardner has his paper here and, by way of introduction to it, it does seem to me that when we met the last time for organizational purposes, we had some sense of the history of this occasion. It may not be a peak in French-language education in the province, but it is certainly a rather high plateau, we hope. It is a very considerable advance. So we asked Bob Gardner if he would prepare a paper giving us some historical background. My suggestion is—

Mrs. O'Neill: This is going to flow right out of what we ended off with here, when Mrs. Carrier-Fraser introduced Mr. Lamontagne. I really think it would be helpful for the committee members to have the outlines of the impact committee and the planning committee that are there now. They are working concurrently with us, and they are working on perceiving what their community wants and delivering it. They really have helped immensely in the preparation of this bill, for—what shall I say?—providing a tenor for the bill, and I think it would be really good if the other members who are not familiar with this could get a list. The order-in-council appointments to these two committees were taken so seriously by the minister and they are highly significant, so I would suggest that if we do not have them—and you do not at this moment—

Mr. Chairman: Members of the committee, are you interested in receiving that material?

Mr. Beer: Interested.

Mr. Chairman: Could I see a show of hands? If you could deliver them to the clerk, we would be very grateful, Mrs. Carrier-Fraser.

Mrs. O'Neill: The mandate of the committee and the members.

Mrs. Carrier-Fraser: I might add also that the staff hired to work on those committees has also constantly worked with us as we developed the bill. We always got their input as we were making decisions along the way, and they have reviewed the bill with us since it has been introduced, so they have been part of the discussions. We knew exactly what the French-language population in the Ottawa-Carleton area was thinking as we were developing this.

Mr. Chairman: As you heard, the committee would be very interested. Thank you very much.

Going back to this report, as I understand it, it gives us some modest historical background for Bill 109, which we are considering. I wonder if that could be distributed now, if we could glance at it. Mr. Gardner, I think, very briefly, in a matter of minutes, will speak to it.

1720

Mr. Allen: Mr. Chairman, if you will excuse me, it is not because this is a modest presentation by Mr. Gardner but simply that I have an event I have to be at down at Harbourfront. Therefore, I shall—

Mr. Chairman: If Richard Allen has to leave, and as he is the representative of the NDP at the moment, could I have your permission then to briefly discuss our next meeting? On the report that we just approved, it was agreed that the briefing would continue. Might I suggest that we still meet Monday, albeit briefly, for organizational reasons? It does look as though Tuesday is going to be quite complicated.

You have already received notice of the meeting Monday. I would suggest that we meet here at this time—I am saying this generally now just while Richard is here and I will repeat it at the end—and it will largely be for organizational purposes. Is that OK?

Mr. Allen: Sure.

Mrs. O'Neill: Will that be organization on Bill 125?

Mr. Chairman: It is on the committee's work, yes—assuming we have Bill 125, if we have it; if we do not, we will not. It is so we know what we are doing the following day. That is basically it.

Bob Gardner, would you take us through this briefly?

Mr. Allen: I shall read your work.

Dr. Gardner: What I have prepared is a very succinct chronological outline of the key junctures in the development of French-language education in the province and in the discussion and deliberations on the question of French-language governance, as a background to the particular question of the demand for a homogeneous French-language board in Ottawa-Carleton.

I will take the committee's direction, but you may not want me to go through page by page.

Mr. Chairman: You can take that for granted. You can speak to it very, very briefly.

Dr. Gardner: Take this away with you.

I talk a bit about the early history of the first French-language primary schools being established well before Confederation; then the period, basically, in which there were explicit restrictions on French as a language of instruction. After that, during this century, in which—more informally and by local compromise and local agreement—French-language instruction became much more common, the key question then became how that is to be governed.

Then there was the explicit commitment, the first commitment in 1967 of the government to providing some statutory authority for French-language instruction and extending that instruction to the secondary level. It was at the elementary level that the instruction had developed in an informal way in different parts of the province.

On page 3 of the memo, for the first time there is some discussion of the question of a single language board in Ottawa-Carleton. I have laid out when this discussion first arose officially, the Mayo commission, the subsequent working bodies and documents that discuss this matter, various representations and deliberations between the Franco-Ontarian community and the government from that time on, a couple of key documents there.

Finally, I have included as an appendix—and you already have the Roy committee report. It has a very useful historical chapter which would be another overview, if you quickly look at it, and I have also included as an appendix its recommendation. That was in effect the last official document before the legislation and the consultation documents around it.

Mrs. O'Neill: I just want to mention that on page 3, with a great deal of purpose, the word "homogeneous" has been dropped from the whole endeavour. That really has to tie with something as serious as the constitutionality of this bill, because the homogeneous connotation indicated that there was going to be some melting pot rather than a two-distinct-sector model. You will notice then that, although that word stuck with the whole idea for 10 years or there, it was quickly dropped once we got more formal in the preparation of this legislation.

Mr. Chairman: Thank you. Any other comments?

Bob, I thank you for that and I hope the members of the committee will read this and get some sense of the history of this occasion.

Is there any other business?

La prochaine réunion du comité permanent concernant le projet de loi 109 aura lieu dans cette salle lundi prochain, après la fin de la période des affaires courantes, c'est-à-dire vers 15h30. Je répète le numéro de téléphone pour les personnes qui désireraient obtenir de plus amples renseignements. Il s'agit des (416) 965-6834. La séance est levée.

The next meeting of the standing committee on Bill 109 will be held after routine business at approximately 3:30 next Monday. It will be held in

this room. I repeat the phone number for those wishing further information. It is (416) 965-6834. This meeting is now adjourned.

The meeting adjourned at 5:26 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ORGANIZATION

MONDAY, MAY 16, 1988



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitution:

Beer, Charles (York North L) for Mr. Tatham

Clerk: Carrozza, Franco

Staff:

Gardner, Dr. Robert J. L., Assistant Chief, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, May 16, 1988

The committee met at 3:32 p.m. in room 151.

ORGANIZATION

Mr. Chairman: Ladies and gentlemen, this is the standing committee on social development. We are here for a meeting which, as far as I am concerned anyway, is largely organizational. We have two things essentially to organize. One is to finalize our arrangements for dealing with Bill 109. The other is to make arrangements for the way we will handle tomorrow Bill 125, which has just been referred to us by the House.

I will begin by summarizing where we stand with the arrangements for Bill 109. At the present time, we will meet on Thursday for that bill after routine proceedings, and you have notice of the meeting. There will be public hearings here. My understanding is that one group has already indicated interest in meeting with us, and there may well be others. That is the present arrangement. We will be in this room on Thursday and we will be considering Bill 109.

Next Monday, as you know, is Victoria Day, so the House will not be sitting. On Tuesday, at the moment the arrangement is that we will travel, those who wish to do so, by air, leaving Toronto at eight o'clock.

Mrs. O'Neill: Is that 8 p.m. or 8 a.m.?

Mr. Chairman: It is 8 p.m. The thinking there is this: We may or may not have business for the committee that afternoon but we are all supposed to be at the House until 6 p.m. I think it is a matter for members to decide when they would like to leave, but at the moment the suggestion is that 8 p.m. would fit all contingencies.

As you know, we will both stay at and hold the hearings at the Skyline in Ottawa on Wednesday and Thursday. The suggested return time—and this too can be changed—is 8:30 a.m. on Friday. The thinking there is that if the hearings on the Thursday go very late, we will not be able to leave Ottawa that evening. The arrangements have been made with that in mind.

As far as Bill 109 is concerned, what I have outlined—by the way, let me say that the advertising is going to go ahead as we planned. There will be the appropriate five days' notice. The budget has been submitted, and we are assuming the budget is going to be approved. We have permission to travel. Those sorts of things have been done. Are there any comments on that pattern for Bill 109?

Mr. Jackson: What time on Wednesday?

Mr. Chairman: It will be 9:30 on Wednesday.

Mr. Jackson: What is the schedule then: 9:30 until noon and 1 until

Clerk of the Committee: From 1:30 until 5.

Mr. Jackson: Nothing in the evening?

Clerk of the Committee: So far, Mr. Jackson, we have booked about 55 per cent of the people who requested it. There is no need for that at this time.

Mr. Jackson: OK, there is no need for the evening. I am just trying to make arrangements if I have to fly back for a function that evening and then fly back again in the morning. Is it too early to tell?

Clerk of the Committee: Yes.

Mr. Jackson: Will you please not book my flight until I can resolve that?

Clerk of the Committee: Sure, no problem.

Mr. Jackson: Thanks.

Mr. Chairman: As we are meeting on other matters, we can update this as time goes on. For example, we can update it tomorrow and on Thursday.

Mrs. O'Neill: Are the tickets booked centrally or are we responsible for our own?

Mr. Chairman: No, they are booked for eight o'clock at the moment. By the way, Yvonne, other arrangements could be made for you by the clerk.

Mrs. O'Neill: Okay, so my office should contact the clerk, because I am not even sure I am coming back next Tuesday. I have a function in Ottawa that is rather significant.

Mr. Chairman: We have anticipated that you and Dalton McGuinty may not want to return.

Mr. Campbell: Never return.

Mrs. O'Neill: It is not quite that bad.

Mr. Jackson: You should try being in opposition.

Mr. McGuinty: I will not require a flight there or back. I will be there.

Mr. Chairman: If I might say for the new members, the clerk makes these arrangements. Feel free to contact the clerk's office.

Mrs. O'Neill: I definitely will not be coming back on the Friday morning. The Tuesday I am still not sure, but I will be in touch with your office.

Mr. Allen: Are we likely to have two very solid days?

Clerk of the Committee: Yes.

Mr. Allen: So the likelihood of our sitting in the evening on Thursday is quite strong.

Clerk of the Committee: Yes. We were told that there was a strong

indication that there are more groups that might be present there, without contacting us. That is a question the committee will have to decide, what it wishes to do then. With all the groups that were on the minister's list and other groups that have contacted me, right now we are just negotiating on the times. So far there are no night meetings at all.

Mr. Chairman: We have yet to advertise, you understand.

Mr. Campbell: Picking up on that point, I think once the advertising comes in, we will probably have a better sense of how much time is needed and available and that could change our plans. But, right now, it looks like we are about 55 per cent booked and the others should come in.

Mr. Chairman: I will stress what I said. I gave you the outline so you have some sense of how we are going to organize the bill. There may well be changes the clerk will need to make in terms of your individual adaptations. We are bearing in mind the fact that people would like to leave. Apart from the Ottawa members, all of us will try to keep the work to as short a time as we can.

Mrs. O'Neill: There is very high interest in this. Everywhere I was on the weekend, people asked me when the hearings were.

Mr. Chairman: I have had phone calls myself this weekend.

Clerk of the Committee: To make sure that everybody in Ottawa is heard, the chairman has directed me to give 15 minutes for individuals and half an hour for groups, so that we can get in as many as we can. Half an hour is quite good.

Mr. Chairman: Are people reasonably satisfied with that?

Mr. McGuinty: Are those who are presenting statements required to have a written brief in advance?

Mr. Chairman: No.

Clerk of the Committee: Because of the shortness of time.

Mr. McGuinty: All right.

Mr. Chairman: One last thing on the budget: As you know, we adjusted it the last time somewhat, at Richard Johnston's suggestion. It is now an eight-week budget, which is the normal maximum budget, I understand.

I will then, with your permission, go to Bill 125. My understanding is that the House has referred it to this committee for clause-by-clause consideration tomorrow, and tomorrow only. This is by agreement of the House leaders.

It seems to me that we discussed a number of things last time. First of all, we were advised of the three groups whose names were put forward by various members of the committee. Has that been done? We have two.

Clerk of the Committee: I only have two names of groups. One is the Ontario Public Schools Trustees' Association, with Ross Parry. The other is the Ontario Separate School Trustees' Association.

Mr. Jackson: There will a further one from Metropolitan Separate School Board.

Mr. Campbell: There is one from the Sudbury separate that has indicated it wants to be there, but I was not sure about exactly when we were going to hear it. After our office calls them this afternoon, they will know. My understanding is that the members of the trustees will be here, so that is at least one more group that will be represented.

Mr. Chairman: My question simply is—

Mr. Jackson: And there is a further group, the Association of Large School Boards in Ontario, ALSBO.

1540

Mr. Chairman: Is there anything else we should do in advising such groups? Have any members of the committee any suggestions?

Can I then proceed to a point that was made the last time? That is that these groups will be present as resource people. I think this is the present understanding. That was my understanding. They will not be here to make presentations to the committee.

Mr. Jackson: It is customary that, if called upon to clarify a certain point, it is presented in a presentation format. So it begs the indulgence of the chair and the committee. The purpose of invitation and presentation for a resource group is so that we can respond quickly without being burdened by the five-day notice rule and ads in the paper making it totally open.

May I suggest that in no way would we want to see the process of them enlightening us as to their concerns being limited in any fashion? The social development committee has used this method on several occasions in the past. We would not want to limit it, especially when we may only have five parties who are present.

I will present my amendments on behalf of the Progressive Conservative Party. They will have representatives here upon whom it has an impact and they will be making the presentation on behalf of their parent groups.

Mr. Chairman: Is there any discussion on that point?

Mr. Allen: I would not say that it is usual to have this happen. It has happened in the past from time to time. It normally is considered to be a device which offers some limited opportunity for comment at our request, as we meet a problem when going through legislation in detail.

It is not an opportunity for any of us to invite a group to come forward and to make a presentation on the legislation as a whole or to develop a fairly large posture vis-à-vis any particular point. I want to caution us all in that regard.

As I understand it, you have told us that we have one day—that is the sum total of the time available—and that we have to complete clause-by-clause consideration of that piece of legislation in that space of time.

Mr. Chairman: That is the direction of the House.

Mr. Allen: That obviously means that all of us are going to have to be very precise in the way we resource the parties present. I say that

notwithstanding, and not wishing to prejudice, their presence, or us accessing them. But realism is going to require some fairly good precision on our part in accessing their presence.

Mr. Jackson: Do I understand you correctly to say that the reference was for one day only, to do clause-by-clause? It is extremely unusual for a committee to be directed that it must complete its work within one day.

Mr. Chairman: I can only repeat to you what my understanding of the House leaders' understanding is. They have waived the five days' notice and tomorrow is the day. My understanding is that we complete it tomorrow. I can seek further direction if you wish.

Mrs. O'Neill: That is correct.

Mr. Jackson: The reason I raised that is that I was responsible for some of the negotiations with the minister and my fellow critic from the New Democratic Party. There was concern that we have full public hearings. Part of the negotiations were that we could achieve something similar in the context of a focused effort on the part of this committee.

I would not want to have the impression left, if we are going to quote the House leaders, that our activity was merely to do clause-by-clause, that in fact our negotiating position involved public hearings and we felt that we could achieve that in one day.

Now, if there is difficulty, I would be more than pleased to have the matter clarified with the House leaders before the start of tomorrow, but I can assure you, as one who was somewhat responsible for the fact that we are going to have this in this committee—and I make no apologies for that, as I have stated in the House—I think we should do some justice here in terms of getting some input.

The fact that the record for this bill is a series of amendments being made up as we go along is further evidence of the need for us to provide a public forum in which these matters can be aired in a final fashion, so that we can get it back into the House.

I would not want to see us in any way limit it by suggesting—I understand where you are informing the committee. I simply wish to put on record that this was not the understanding we had among our House leaders. The speeches made by the member for Scarborough West (Mr. R. F. Johnston) and myself in the House would reflect some of the elements of the agreement that we understood we were working under.

Mr. Chairman: Again, if I might comment as chairman, they certainly are public hearings and we certainly are informing interest groups to be here. Naturally, I will take direction of the committee both now and tomorrow, but my understanding is that these public hearings are such that they will not be, as for example our hearings in Ottawa will be, a series of presentations by groups attending.

Mr. Campbell: Before we get bogged down in semantics—I do not say that as criticism but maybe as a constructive means of dealing with this thing—I think it is important that we take that direction. We have a job to do that has been referred to us by the House. I think we should attempt in all ways to meet the deadlines and also to give the full focus. I think that is what Mr. Jackson is saying, that we give it full focus, but at the same time

considering what Mr. Allen has also said about preciseness, and we can get through it. Maybe we should try that and then see where we are when we get through the clause-by-clause stage. I suggest we just proceed. If there are difficulties, we can always review them with the House leaders.

Mr. Allen: I continue to be a little bit worried about Mr. Jackson's language about "without limiting." Presumably, we are functioning under some limits.

Mr. Jackson: Talk to Richard Johnston.

Mr. Allen: His House leader, my House leader and your House leader have negotiated a way for us to try to do this, and that does imply that there are some fairly severe limits on all of us. I just want to caution us, more than anything else, as to the fact that those limits are there and we will have to very respectful of them if we are going to get through significant business tomorrow in one day.

Mrs. O'Neill: As I understand it, that is the limitation—one day. Mr. Ward will be here throughout that day, as I understand it. I suppose it is 3:30 p.m. to 6 p.m. We have not changed the times.

As Mr. Jackson has suggested, there has been a series of amendments to this bill because it has been of such high interest and because we are dealing with other politicians. I think we all have to be extremely respectful of that. We are dealing with a group of elected people. The amendments that have been proposed, when the bill was withdrawn and then represented, I think attended to a lot of the concerns. It seems that even in the speeches that have been made in the House on this bill, several of the concerns that were there last December are not there.

There seem to be a few focuses that yet are unresolved. I think we all pretty well know what those are. There has also been some negotiation on some of those points. I am confident that we can do this tomorrow. The clause-by-clause process, as we know, can be quite condensed if people's concerns have been attended to. Surely, in having these resource people here to bring forward the few amendments that seem to be coming, we will be able to accomplish that work.

Mr. Chairman: I am grateful for that. With respect, I think we can debate aspects like that tomorrow. I hope all three parties will consult their House leaders on this matter.

The chair and the clerk may ask on these occasions for amendments, both from the ministry and from the opposition parties. I would be most grateful if I could receive those either today or early tomorrow in order that the clerk and I can determine if they are appropriate. I do understand that you are perfectly entitled to bring forward amendments tomorrow, but it would be most appropriate, particularly in the light of our discussion now, if I could have those amendments today or early tomorrow.

Mr. Jackson: It is customary for the chair then, among the three political parties, as well as with the chair—

Mr. Chairman: I will see that they are distributed.

Mr. Jackson: Our three are ready, but we have two additional that we have determined on as of noon today.

Mr. Chairman: Will they be ready this afternoon?

Mr. Jackson: Yes, my staff will deliver them to the clerk before the day's end.

Mr. Allen: I can make no commitments for Richard Johnston who has apparently been unavoidably detained in Peterborough. Other than saying that he is in a good place, I am not sure what stage his amendments are at or whether I can promise anything to you.

Mr. Chairman: We do understand that.

Mr. Allen: I will certainly put it to his office and assist them. I hope they will be able to get them to you at the earliest possible moment.

Mr. Chairman: The ministry ones will go to the clerk.

Mrs. O'Neill: I am getting ready to participate in this.

Mr. Chairman: Franco, is there anything else of a routine nature?

Clerk of the Committee: Not at the moment that I can think of.

I would like to have a clarification of Mr. Jackson's discussion about the presentation by the members.

Mr. Chairman: I am not sure that we can obtain a clarification at the moment.

Clerk of the Committee: If I may, Mr. Jackson, as you know, we have two different discussions here. One is that, in the past, the members we invite can be in the audience and, if they have concerns in a clause-by-clause, they can approach the members and suggest certain amendments. That is my understanding of what Mr. Allen was saying. However, your understanding might be different. What you are suggesting is that if they have a proper presentation, let us say 10 to 15 minutes or half an hour—

Mr. Jackson: No, not a half hour. Five or 10 minutes would be enough for any of the presentations on any of the sections we have concerns about.

I should tell you that the NDP was prepared to let this go in committee in the whole House. It was our position that it must be done within the committee in order to facilitate these presentations. I feel very strongly about my being in a position to indicate that there is a group present which I would like now to call forward and present the concerns relative to an amendment I am about to place.

I wish to have at least that flexibility, and Mr. Campbell may wish to do likewise with the Sudbury board. That is my understanding of what I had negotiated first with Mr. Johnston, which as you know, is a prerequisite, in order to get 20 people. Then, with Mr. Ward, the House leaders effected the agreement there.

Clerk of the Committee: I understand what you are saying now. Let us say, if you have an amendment to section 6 and you wish to clarify, you would like to call upon the group to make its presentation for five minutes.

Mr. Jackson: They will tell us what it means to them and why we are presenting the amendment.

Clerk of the Committee: I am much clearer now. Thank you.

Mr. Chairman: I still repeat my request. I hope that you will consult with your House leaders because, as the chair, I would be glad to have direction from the House leaders. Then we will proceed tomorrow and deal with these public hearings as effectively as we can.

Ladies and gentlemen, is there any other business? If not, the committee will adjourn until, let us say, 3:30 p.m. tomorrow.

Mr. Jackson: Or after routine proceedings.

Mr. Chairman: Yes, whichever is the later.

The committee adjourned at 3:53 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION STATUTE LAW AMENDMENT ACT

TUESDAY, MAY 17, 1988



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitution:

Beer, Charles (York North L) for Mr. McClelland

Clerk: Carrozza, Franco

Staff:

Williams, Frank N., Legislative Counsel

Witnesses:

From the Ontario Public School Trustees' Association:

Bowes, Harry, Vice-President

Pierce, Marie, Director of Policy and Legislation

Parry, Ross, Director of Public Affairs

From the Ministry of Education:

Ward, Hon. Christopher C., Minister of Education (Wentworth North L)

Bowers, Alan G., Education Officer, Central Ontario Region

From the Metropolitan Separate School Board:

DiGiovanni, Caroline, Chairman

Hartmann, Norbert, Superintendent of Planning

From the Association of Large School Boards in Ontario:

Read, Duncan, Chairman, Legislation and Finance Committee

Cullen, Alex, Member, Legislation and Finance Committee

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, May 17, 1988

EDUCATION STATUTE LAW AMENDMENT ACT

The committee met at 3:38 p.m. in room 151.

Consideration of Bill 125, An Act to amend the Education Act and certain other Acts related to Education.

Mr. Chairman: This is the standing committee on social development, and we are here for clause-by-clause study of Bill 125.

The Minister of Education (Mr. Ward) is with us for this afternoon. It is my understanding that by agreement of the House leaders and the critics, we have one full day in which to complete this important task.

Before we begin, I would like to go back to something we discussed yesterday, which is the matter of the roles of members of the public in this clause-by-clause hearing. We have this very set time frame for our work. What is the wish of the committee with respect to the role of the public delegations that are here?

Mr. Jackson: Mr. Chairman, do you wish us to reiterate the discussion we had yesterday? In the interests of time, I feel there are three or four groups that have specific concerns which have been reflected in amendment form and I would appreciate the committee's indulgence that they be called forward to comment briefly. I believe the groups require no more than five or 10 minutes to make their points, or we could call them forward on specific sections. I rather think that if we bring them forward on specific sections, they might be before us more frequently. I am open, but my position has not changed from yesterday, that the groups be entitled to come forward and make presentation comments to assist us.

Mr. Campbell: If we are going to deal with the clause-by-clause, with all due respect to the proposal that is made, perhaps I could offer the fact that there may be some that we can concur on without the representation, notwithstanding the fact that everybody should have the input he is looking for. I am concerned about coming back again for a specific amendment that is being proposed, and concerned that they might be before us two or three times to explain the rationale. I am concerned about that and I would rather go into the clause-by-clause and deal specifically with those precise points made by the member for Hamilton West (Mr. Allen) about precise discussion of those kinds of things. I would ask, if we are dealing with clause-by-clause, that we do it by that method and then meet everybody's concerns fairly.

1540

Mr. R. F. Johnston: I really am not too concerned about how we do this except that it seems to me that I have talked to most of the groups that are involved at this moment, which have been chatting to both Mr. Jackson and myself and to ministry officials around amendments they would like to see. I think what may be most practical would be to call them forward on amendments for specific comment to those amendments where they feel it is necessary or we feel it is necessary.

In some of the instances I have before me, I think I can probably put forward their positions well enough. If I get considerable shaking of heads that I am not doing it right, then we can call them up immediately. I have often been misinterpreted, as Mrs. O'Neill will know, and therefore I would not want to presume that I could speak on their behalf, but in some of these cases, it would be fairly easy to do. We do not need to have opening statements or anything like that. I prefer it be done as each section comes up, and if members would like them to come forward at that time, then we get them up for each item.

Mr. Chairman: I look around. These would be short interventions, I assume, as the amendments come up.

Mr. Campbell moves that the public delegations be called forward for specific comment to those amendments where the committee or the delegations feel it is necessary.

Motion agreed to.

Mr. Chairman: Can we now commence the clause-by-clause examination of the bill? Members of the committee, I think you have copies of government amendments. We have two amendments from Mr. Johnston which will be circulated.

Mr. R. F. Johnston: No. One is a replacement. Legal counsel added some clarification wording to the one that was circulated earlier. There is one new one, and I am trying to get a third prepared for you at this stage.

Mr. Chairman: There is a third one due. You have the government amendments, which look like this. You have two of Mr. Johnston's amendments, one that is typed, headed Bill 125 like that, another that is handwritten like that and there is another to come.

Mr. Jackson, I think you just handed me some. Do we have copies of those?

Interjection: We have not had a chance to run them off yet.

Mr. Jackson: We did copies for you, though.

Mr. Chairman: He says we have copies.

Mr. Jackson: Did we submit them in bulk copy?

Mr. Chairman: No.

Mr. Campbell: Are you planning to deal perhaps with those ones that do not seem to be a problem and get to the other ones so we can spend as much time as we can with those possible amendments?

Mr. Chairman: My intention is to ask in a moment if there are any amendments to the first 10 sections and so on.

Mr. Campbell: Thank you.

Mr. Chairman: Mr. Jackson, do I understand copies are coming of yours?

Mr. Jackson: Yes. I thought my staff had presented them in bulk form for convenience, but they are being printed now..

Mr. Chairman: They are being printed. In which case, if I begin to call out the clauses and we get to one of yours, we will simply wait. Is that OK?

Mr. R. F. Johnston: You can stand it down or whatever.

Mr. Chairman: OK. Minister, do you wish to make an introductory statement?

Hon. Mr. Ward: Mr. Chairman, given the time lines that we have, I think I will waive the option of an opening statement. We completed the debate yesterday, and I think most of it is covered in the opening statement that was given in the legislation.

Sections 1 to 10, inclusive, agreed to.

Mr. R. F. Johnston: I am looking at the top of page 3. I want to be clear. Because of the way the numbering of this bill is, it is a little complicated.

Mr. Chairman: Yes, we will get to the subsections. I will keep those numbers.

Sections 11 to 23, inclusive, agreed to.

Mr. Chairman: This brings us then to section 24.

Mr. R. F. Johnston: Excuse me, it will bring you to section 23a, which I would like stood down until I can get you copies of an amendment with regard to the Indian representation on boards.

Mr. Campbell: It is proposed 23a?

Mr. R. F. Johnston: It is proposed 23a.

Mr. Chairman: You move that be stood down?

Mr. R. F. Johnston: Yes.

Mr. Chairman: Agreed.

Section 24:

Mrs. O'Neill: I have three amendments to propose for section 24.

First, we are going to look at 206a(1) of the act, which is on page 6 of the piece of legislation.

Mr. Chairman: Would we refer to that as a subsection, as it does here, "subsection 206a(1)"?

Mrs. O'Neill: Yes. I just want people to get it in their books, if they have the legislation in front of them.

Mr. Chairman: Mrs. O'Neill moves that the definition of "public school electoral group" in subsection 206a(1) of the act as enacted by section 24 of the bill, be amended by:

and (a) inserting after "means" in the first line "with respect to a board";

(b) inserting after "electors" in the fourth line "of the board."

That is the first amendment.

Is there any discussion of that proposed amendment? Shall it carry?

Mr. Jackson: No, I have an amendment.

Mr. Cousens: Was that circulated?

Mr. Jackson: Mr. Carrozza, do you have my copy? Does legislative counsel have my copy?

Mr. R. F. Johnston: Are we having an amendment to the amendment?

Mr. Jackson: Yes.

Mr. R. F. Johnston: Rather than an amendment to the section.

Clerk of the Committee: "Electoral group"?

Mr. Jackson: Yes.

Mr. Chairman: OK, this is the one that it fits.

Mr. R. F. Johnston: Should we stand it down, therefore, until we get copies?

Mr. Jackson: I apologize for that. I thought that was delivered.

Mr. R. F. Johnston: If it is an amendment to the amendment, we have to stand it down and stand down the first amendment.

Mrs. O'Neill: May I ask Mr. Jackson if he is going to suggest amendments to the other changes we are going to make to section 24, or is it just this one?

Mr. Jackson: I have several to section 24. They will be here any second. I apologize.

Mr. Chairman: I suggest to the committee that we wait until we have these before us. I have one here, but it is the first time I have seen it.

Mrs. O'Neill: OK. I will stand down my amendment then until we get the total package from Mr. Jackson.

Clerk of the Committee: You have subsection 206a(7), 206a(12), 206a(14), 206a(15).—

Mr. Jackson: Subsection 18.

Clerk of the Committee: —two to subsection 18 and 206d, which is similar to yours, on the same side.

Mr. Jackson: It is a backup for Mr. Johnston's.

Clerk of the Committee: Those are new sections as proposed now.

Mr. R. F. Johnston: I guess I am trying to understand. I see his amendments are coming in now, which might help make things more clear.

This is an amendment that is being proposed to 206a(1), and it is an amendment to the amendment to the wording which has just been put forward by the government.

Is that what I understand? It is changing the wording of "means" and "electors."

Mr. Jackson: We should allow this to be circulated first.

Mr. Chairman: Mr. Jackson moves an amendment to the amendment that the definition of "electoral group" in subsection 206a(1) of the act, as enacted by section 24 of the bill, be amended by striking out "reside within the area of jurisdiction of the board" in the second line and inserting in lieu thereof "includes persons who are electors or supporters of the board and includes the dependants of the electors and supporters."

Is there any discussion of the amendment to the amendment?

1550

Mr. R. F. Johnston: Not if that is the amendment, which is the point I was trying to make. We should therefore deal with Mrs. O'Neill's first and then we would amend the amended section. But it is not actually an amendment to that amendment.

Mr. Jackson: All right. We will amend hers first.

Mr. Chairman: Could we return to the original amendment? OK.

Mrs. O'Neill: It is not necessary for me to read it again?

Mr. Chairman: No, it is before you. OK. Does that amendment carry?

Motion agreed to.

Mr. Jackson: Mine has already been read into the record, but essentially it has the effect, if I may speak to it, of essentially dealing with the disenfranchisement of certain voters and specifically cottagers. We feel the definition is too narrow, and we would therefore recommend that this wording be suggested.

If I could, I would like to have the Association of Large School Boards in Ontario come forward to articulate more clearly the concerns—or Ontario Public School Trustees' Association, I am sorry. May I have the indulgence of the committee in order to do that?

Mr. Chairman: Yes.

Mr. Jackson: Thank you.

Mr. Chairman: I would be grateful. You are welcome. This will be a brief intervention. Would you state your names clearly?

ONTARIO PUBLIC SCHOOL TRUSTEES' ASSOCIATION

Mr. Bowes: I am Harry Bowes, vice-president of the Ontario Public School Trustees' Association and I have with me today Marie Pierce, who is the director of policy and legislation for our organization, and Ross Parry, who is the director of public relations for our association.

The Ontario Public School Trustees' Association on behalf of its 57 member boards of all sizes and all regions of Ontario is pleased to be here today to make a submission on this. We agree with this amendment because we feel there are certain people in the electoral group who pay a lot of taxes and should not, as Mr. Jackson mentioned, be disenfranchised. They have a right because of the taxes, I think, to be part of that electoral group. Briefly, that is our position on this amendment.

Mr. Chairman: Thank you, Mr. Bowes. Are there any comments from the committee?

Mr. Cousens: Without this amendment, how many people would be disenfranchised in your view? What percentage or what people in particular would not be voting?

Ms. Pierce: We do not have specific data on the actual numbers of people. The major concern with this amendment is that if cottagers are not included in the definition of the electoral group, then their total number will not be included in the population figure which is used in determining trustee numbers. More important, it will not be used in the determination of the allocation of those trustee numbers.

In some jurisdictions where there is a very large cottager population, what will happen is that when the trustees are distributed in that jurisdiction—say, for example, the cottagers represent a certain portion, say, the northern portion of a board's jurisdiction—and when the numbers are allocated, they are not to be included in the total number for determination of totals or allocation. So they may lose representation in that area because they change from assessment to population.

Mr. Cousens: Just to follow through, I would be interested if the minister would comment on that because obviously there is a fundamental change taking place with this bill as opposed to what has historically been the case.

Hon. Mr. Ward: Just briefly on the methodology that we placed in the bill relative to the issue of cottagers, I guess this is primarily to deal with those with more than one residence. The mechanisms we put in place in Bill 125 are indeed those that were recommended by the joint committee of the various trustee organizations.

I do not see this as being a disenfranchisement of a group. A conscious decision was made to count electors once only, rather than two, three or four times depending on the number of properties they own. Therefore, the government does not support the amendment.

Mr. Cousens: Is there not a fundamental difference between this and previous historical precedent that we have had in Ontario?

Hon. Mr. Ward: The difficulty with that is the fact that previously everything was based on assessment. We are now moving to a system where we are counting electors rather than utilizing solely an assessment role, which is why we have a new enumeration process. On the basis of assessment, I suppose any assessed property, the designated owner or the principal of the corporation, or whatever, then became a qualified elector within that jurisdiction.

Mr. Cousens: Mr. Jackson and I have had previous discussions and meetings on this. I would like to know if the ministry has any sense of the new direction that this gives to what education is going to be about in Ontario.

I own property up north. It is not involved in this, so I have no conflict of interest. I am not a separate school supporter—I guess it does not really matter whether you are public or separate—but I see myself as having the right, as a cottage owner, to participate in elections if I am not happy with what is going on. I have not taken the time to run up and do that, but are you preventing that by not allowing this amendment to carry?

Hon. Mr. Ward: No; that right remains. The issue here is the numbers that are utilized for making a determination of how the representation will break down. The situation could transpire, particularly in a resort area within the province—if the representation is made on the determination of part-time, seasonal residents as well as utilizing the full-time residents of the community, then, frankly, I fear that the distribution of the trustees would be distorted. Those areas with significant numbers of cottagers would get extra representation within that board's jurisdiction. We have not taken away the right to vote but we have taken away the ability to utilize that in terms of how the trustees within a board's area are distributed.

Mr. Cousens: I have a suggestion. Could there be a comment from the Association of Large School Boards in Ontario on that?

Mr. Bowes: I would like to comment on one more aspect from the OPSTA. Not only the cottagers will lose representation at that level, but the year-round residents who intermingle and are surrounded by cottagers will lose representation. They will not have sufficient numbers for a trustee, so they will be lumped into a neighbouring board which might be some distance away, instead of having their own local trustee. So it affects both the cottagers and the local year-round residents who remain there and who might be lumped in with them in another neighbouring municipality because of a lack of representation.

Mr. R. F. Johnston: The first time I heard of this issue a while back was when the Kenora board was concerned about this. It struck me that one of the rationales behind the government's move to the flexible, additional trustees was to deal with those kinds of historical connections, where cottagers had had that kind of representation in the past.

Are you coming to the committee now to say that that kind of flexibility does not meet the needs of many of the communities you are talking about; in other words, that a local board can make that kind of decision, based on either historical connections or on specific growth areas of cottages? Is there not enough flexibility?

Mr. Parry: I see the point you are making. Let us take as an example an area like Muskoka, where three quarters of this part of the jurisdiction

could be cottagers, holiday residents. It may be that after the determination is made, the full-year residents have no representation. What you are saying is that as part of the new amendments to Bill 125, the board could then top up. One of the areas it may top up now is where we have an isolate area as a result of all that. What you are asking is, could that be used in this instance? It is quite possible it may.

I suppose the problem is that that board now may be facing—and it will be looking at—two reasons to use it. One is that the rural situation, the isolate situation was occurring, not necessarily because of the cottagers. We have only isolated this problem in the last few days of this great rush to have the bill going through. Topping up by two may be a figure we all looked at in terms of the isolate rural areas. We did not look at it in terms of the effect that this might have on the cottage areas. Maybe we should have looked at three or four, in some cases. I am not sure.

To answer your question, Mr. Johnston, we looked at the topping up to solve a problem that was not necessarily created by this. We have put it forth as seeing a new problem now and, like all things, this is being done at the last moment. There have been boards that have been in contact with our association, certainly, and there are lots of them throughout the cottage part of this province that have concerns now in this area.

1600

Mr. Chairman: Are there any other comments on this amendment?

Mr. Cousens: Has the ministry considered the letters and correspondence that have come in from the boards objecting to this? You have not had a lot of support from the boards for this, have you?

Hon. Mr. Ward: Actually, the first time this issue has been raised has only been in the course of the past two or three days. As you know, the bill was tabled in the Legislature back last fall. We had a significant amount of correspondence over the course of the winter through our regular meetings with the Ontario School Trustees' Council, representing all boards in Ontario.

We have had numerous discussions and numerous suggestions as to amendments. Quite frankly, this particular amendment has arisen very much at the 11th hour. I will say that the timing is not the concern I have. The concern I have is the fact that we put in place some alternative mechanisms for providing much greater flexibility relative to the distribution of trustees. We have put in place a mechanism that gives boards a great amount of flexibility to deal with rural areas, sparsely populated areas. It was a very, very difficult exercise, one that the trustees themselves were not able to resolve in terms of looking at community-of-interest mechanisms.

The big concern I have is that if we move in line with this amendment, I can see a situation where the distribution within those cottage areas could be skewed very much towards those areas with a lot of summer residences. I am not at all convinced that is necessarily an appropriate way to distribute the board's members, particularly from an educational point of view, where it would be weighted to those with a number of summer residences.

They are not disenfranchised through this process and what would be achieved by this amendment would just be awaiting a shift in the representation to those areas that, in most instances, only involve residents who are there for the course of the summer and perhaps do not even utilize the school facilities on an ongoing basis.

Mr. R. F. Johnston: I guess, like many things with this bill, the timetable we are on is a little compressed. I gather from what the minister is saying as well that neither side here is really able to say whether the flexibility which was put in for isolate boards and other historical reasons is actually going to be able to deal with much of this issue.

From my perspective, it strikes me as a bit anomalous that you have the right to vote on all matters before the board in terms of electing a trustee, but you do not have the right to say anything about the divisions of trustees within the board. It does seem a bit bizarre.

I do not have a strong feeling as to whether an amendment is acceptable to the minister. I gather it is not at this stage. Do you think your electors are in a position where they think this is so serious that it could really mess up the distribution this fall, or is it the kind of thing which could be an amendment that comes later on after these elections are over, after we see how things go? I am trying to find out how serious you think this problem is and its impact on this fall's election under the new rules. That is what I do not have a clear idea of.

Mr. Bowes: I think it is a matter of total representation that all the people who pay for education in Ontario, if they are paying big bucks in that cottage area—I could give examples where a house in Windsor paid a lot less taxes than a cottage up in Muskoka area—should have a say on who represents them. I think that is the position of our association.

Mr. Parry: Mr. Johnston, I would like to talk if I may. We fought very hard, and I know the minister will know this, to have even the inclusion of the topping up from the previous Bill 76 and through the joint committee process. I am sure the association is very grateful to have that new inclusion there, because it was something to which we have seen from the very beginning.

Maybe you are asking us where can we cut our losses on this. I am saying we are certainly grateful to have the new flexibility, which is badly needed and badly wanted by a great many boards. There are a lot of boards—I can think of five off the top of my head—that will be seriously affected by not including cottagers in right away. We all know them. The Muskoka Board of Education, the Haliburton County Board of Education and the Victoria County Board of Education will all be figured in this. I guess what we are doing is bringing forward their specific concerns about how this is going to affect them.

It may very well be that if the government does not see fit to change that, in the next election period we can see what happens. Maybe the topping up was not enough and there were still certain full-time residents who said: "We just did not have the trustee representation. We had it, but it was from someone who was looking at an area 24 miles from here where the educational experience is totally different than ours—transportation programming and so on."

I just want to conclude by saying that when we talk about the distribution and the representation, we are still talking about how people are able to have their educational experience reflected at the board table. That is really what the whole thing is based on, and the bottom line is very important.

Mr. Chairman: I must say to the committee I am a little concerned about this in terms of time and the process that we are now going through.

Again, I would welcome direction. I certainly do not want to cut off public input, but it seems to me that it has to be really quite focused if we are going to carry through with the exercise we are engaged in.

Mr. R. F. Johnston: May I just share with you an old chairman's experience on this? The first couple always take longer. Gradually we work ourselves into the pace that meets our deadline.

Mr. Chairman: OK. Ms. Pierce, with that in mind, if you would.

Ms. Pierce: I just want to add that with regard to the question of whether we can look at this issue after, when you a process of examination of the sort of impact if this legislation occurs, it is very difficult to assess what impact it will have on the total board size or how the allocation is done without the data with regard to the enumeration. We can give you some indications that we have some concerns about what will happen, but until you get the actual enumeration data, we cannot say, "Look, it may not have a major impact and one or two were enough to readdress those problems." That is all we can estimate right now.

Mrs. LeBourdais: It seems to me that rather than disenfranchising anyone here, the flexibility is giving a choice. The cottager will not lose his vote if he chooses to use his vote in the cottage area, but he just has one vote, so it is a matter of choosing one or the other. It would seem to me that things will be very artificially skewed if you have a cottage area that has all sorts of votes and then come September, the cottagers are gone, in effect, and there are not a sufficient number of students there to be represented by what that vote would produce. I think the vote has to go where the individual chooses to put it, but just one vote.

Mrs. O'Neill: Again, I am very impressed with the way the OPSTA presents its case and I think just to look at the way it has presented it is enough. I think Mary Pierce has stated that there is some risk-taking here, and there definitely is. The smaller boards that you are talking about are taking a risk regarding what kind of data are going to come forward.

But from my perspective, I think what we are asking is that the review process be a very active one. As you know, this whole bill is going to be under review—it is built right into the bill—for one year, and if this situation, as many others that we are going to look at, really does present problems to several of your constituents, then I think we will have to look at it more seriously. We are trying to be as fair as possible.

We do not think we have disenfranchised anyone and we want to do exactly what Mr. Parry said: have the board of trustees reflect the community as much as possible, the community that is permanently part of that area of the province. So let us hope that we can continue to dialogue and that the review process will be a very meaningful one. This will certainly be one of the things we will be watching.

Mr. Jackson: I have a final question. To what extent did the minister receive legal counsel about the whole notion of disenfranchising cottagers in this regard?

Hon. Mr. Ward: Cottagers have not been disenfranchised.

Mr. Jackson: They are not calculated for purposes of representation. That is a form of disfranchisement. Otherwise, why have you got a topping-up

formula? You have acknowledged the principle in other amendments. I am just basically articulating—

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Hon. Mr. Ward: We have had legal advice through legislative counsel and through counsel within our own ministry. We are moving from a system of representation that is based on people as opposed to assessment wealth and we are satisfied that what we propose will sustain any challenge.

Mr. Chairman: Could I ask for those in favour of Mr. Jackson's amendment?

Mr. Jackson: I would like a recorded vote.

Mr. Chairman: By all means.

The committee divided on Mr. Jackson's amendment, which was negatived on the following vote:

Ayes

Allen, Cousens, Jackson, Johnston, R. F.

Nays

Beer, Campbell, LeBourdais, McGuinty, O'Neill, Y., Tatham.

Ayes 4; nays 6.

Mr. Chairman: We are still on section 24 of the bill, regarding section 206a. In fact, we are at the definition of "electoral group." By the way, Mr. Bowes, Ms. Pierce, Mr. Parry, thank you very much.

Mr. Parry: I have a comment, if it is possible, to make on—

Mr. Chairman: No.

Mr. Parry: It is the equivalent section, when you get to it.

Mr. Chairman: By all means. You will be called again. We are at "electoral group." Can I assume that the definitions of "board" and "coterminous Roman Catholic separate school board" are carried? OK.

Clerk of the Committee: "Electoral group" carries too.

Mr. Chairman: And can I assume that "electoral group" carries? OK. Are there further amendments to section 206a?

Hon. Mr. Ward: It is subsection 206a(1), I think. You had better be specific.

Mr. Chairman: I beg your pardon? Section 206a(1). Thank you.

Mrs. O'Neill moves that the definition of "separate school electoral group" in subsection 206a(1) of the act, as enacted by section 24 of the bill, be amended by:

(a) inserting after "means" in the first line "with respect to a board";
and

(b) inserting after "electors" in the fourth line "of the board."

Mrs. O'Neill: It is very similar to the previous amendment. It is on page 7 of the legislation.

Mr. Chairman: Everyone has that before them?

Mrs. O'Neill: The top paragraph of page 7.

Motion agreed to.

Mr. Chairman: Can I assume that the subsections then between "electoral group" and the top of page 7, which is where we are, are carried? OK. Are there amendments beyond that point?

Mrs. O'Neill: I have one on page 8.

Mr. R. F. Johnston: The amendment I was going to propose to the new section 23a affects subsection 206a(6) and, therefore, I think it comes before the next government motions.

Clerk of the Committee: Richard, you also have subsection 206a(7).

Mr. R. F. Johnston: Yes. I—

Mr. Chairman: That is on page 7?

Clerk of the Committee: Yes, on page 7.

Mr. R. F. Johnston: Sorry: Subsection 206a(6).

Mr. Chairman: Subsection 206a(6). OK. That is on page 7?

Mrs. O'Neill: Subsection 206a(2) is the one that is next to be amended.

Mr. R. F. Johnston: I thought we just did it.

Mrs. O'Neill: No. Subsection 206a(2).

Mr. R. F. Johnston: Great.

Mr. Chairman: Mrs. O'Neill moves that subsection 206a(2) of the bill be struck out.

Mrs. O'Neill: That is on page 8.

Mr. Chairman: Could we just pause here for a moment, OK? I was on top of page 7.

Mr. R. F. Johnston: I think you were ahead of us.

Mr. Chairman: OK. I am sorry. Could you take me back to not only the chapter, Richard, but the page?

Mr. R. F. Johnston: I think what we are now moving is the third amendment from Mrs. O'Neill, which strikes out subsection 206a(2) on page 6. Is that right?

Mr. Chairman: This one. OK. We have it.

Mrs. O'Neill: OK. Just a second.

Mr. Chairman: Yes, that is right. Thank you. It is page 6.

Mrs. O'Neill: Forgive me, yes. Sorry.

Mr. Chairman: It is page 6, subsection 206a(2), which is the noninset 2 that is there.

Mrs. O'Neill moves that subsection 206a(2) of the bill be struck.

Mrs. O'Neill: That is on page 6. Sorry, I had the wrong page.

Mr. Chairman: Does that amendment carry?

Mrs. O'Neill: What we have just done now makes this unnecessary.

Mr. Chairman: I do see it, yes.

Motion agreed to.

Mr. Chairman: OK. Am I now at the top of page 7?

Mr. R. F. Johnston: The next amendment is my amendment which affects subsection 206a(6), but in fact is going to be an amendment that we stood down to section 23a, which comes before this part on page 4. If I might read it and then describe the issue.

Mr. Chairman: That is this one?

Mr. R. F. Johnston: Yes.

Mr. Chairman: Mr. Johnston moves that subsection 165(5) of the act be amended to read:

"Where the number of Indian pupils enrolled in the schools under the jurisdiction of a board pursuant to one or more agreements made under this section exceeds 25 per cent of the average daily enrolment in the schools of the board, two persons may be named under subsection 4, and where the number of pupils enrolled in the schools under the jurisdiction of a board pursuant to one or more agreements made under this section exceeds 50 per cent of the average daily enrolment in the schools of the board, four persons may be named under subsection 4 and subsection 4 applies with necessary modifications in respect of such persons."

Mr. R. F. Johnston: That would stand as a new section 23a if it were to carry.

Mr. Chairman: Would someone care to speak to that?

Mr. R. F. Johnston: The reason that this deals with subsection 206a(6), you will notice that there is a reference there to section 165 of the Education Act in which it deals with the matter of representation by Indians on boards of education where the children are being educated in schools run by those boards. That series of sections under that act at this point talks about how you decide whether there is any representation at all for those Indian bands on the boards.

Presently, the legislation only specifies that where the student enrolment numbers exceed 25 per cent of the average enrolment, then they get two representatives. Otherwise, they get one representative. The problem—this was raised by Howard Hampton, the member for Rainy River, with me and then I guess in the House as well in my absence yesterday; I know he wanted to speak on it—is that there are a number of areas that he is aware of in northwestern Ontario where in fact the native kids in various schools outside the reserve actually are a majority, and yet their representation on the board is limited to two representatives. Given now that we are moving to a representation-by-population model for the rest of the board, it seems to be blatantly unfair.

The difficulty that we have in trying to draft anything on this, and it may not be possible for government members to come to an accord with me on this particular amendment, is that the present system for native representation is by enrolment, whereas everything else we are doing is by rep by pop. The second major problem is that these are not people who are defined as either public school supporters or separate school supporters. They are in fact a band which receives a purchase of service from the board through the federal government, generally speaking. So it is not their taxes which, in a sense, are paying for the childrens' education either.

As a result, the possibility of amending this act with a new formula like we have done for representation by population does not fit because they do not fit the definitions that we have in this act around a public school or a separate school supporter. What I thought would be a useful interim step to reflect the reality that exists in some of these boards where there are many more Indian kids than there are the white kids in the schools, is that it might be good to not just leave the number where it says 25 per cent guarantees you two, but say that where you have more than 50 per cent of the kids enrolled you are at least guaranteed four trustees. .

It should be remembered that is in the context of the fact that we are passing is a bill which makes sure that no board has fewer than eight members on it. So we are not talking about a majority being on this board. This would be still a minority. It would be complicated—and I admit this and I thank legislative counsel for pointing this out to me in advance—by the fact that a number of these boards may also have several partners on them already, in terms of French participation, etc., etc., which would then maybe make this a largest voting bloc on a board, although not a majority, if you understand what I am trying to say.

1620

I just wanted to raise it because, as often happens with legislation, some people get left out.

What Mr. Hampton was trying to say is that we are not recognizing problems of representation by the Indian population, if we do not make some amendment to this. He had wanted to try to put in something which would allow them rep by pop, representation as well, but I have been convinced by legislative counsel that, at the moment, that is not an appropriate vehicle under this act because of the definitions we are bound by.

I thought that this interim step of at least recognizing that where there is more than 50 per cent of the children enrolled they should have a fairly substantial representation on the board is an important first step.

It should be understood that it may be better in the long run that some

sort of protection in legislation for what the wording of the contracts are between the board and the band is a better way of looking after the band's interests than is having representation on the board because they would still be a minority interest. What we have accepted in legislation is the fact that they should have some representation.

I guess I am just arguing that it needs to be slightly more sophisticated than this 25 per cent cut-off, and that maybe we should look at putting in this amendment at this time. Obviously, if this were to pass, we would then have to get rid of subsection 6, and that is why I have raised it at this time.

Mr. Chairman: Any discussion of Richard Johnston's amendment which is the new section 23a?

Mr. Beer: Do we have any sense of how many boards we are talking about here?

Mr. R. F. Johnston: I am not sure how many. Perhaps Richard Allen might have a better idea.

Mr. Allen: I cannot give you the figures offhand, but about a year and a half ago, we did do a survey of the reserves that would be in that situation, and there were not many at all across the province. I think that there were one or two in the far northwest where Mr. Hampton has some sense of the situation, and there was one other that was a really major outstanding example and that was on Manitoulin Island. My sense is that you really would not be in for a very major shift in any more than three boards at the most.

My other comment would be that I do not think that for the most part those reserves are in situations where there would be significant overlap, as the legislative counsel indicated, of French representation by virtue of French-language sections on the one hand, and then native representation being augmented on the other hand under this proposal. I doubt very much that you are going to get that double overlapping impact.

I had suggested this to the former Minister of Education, not quite in this form, but I asked him to move in a similar direction. He did not.

I recognize, as you all do, what Mr. R. F. Johnston has said with respect to the slight anomaly of having representation by population and by assessment at one and the same time in the act, but I do not see any other way of getting around that in this particular case, unless you are prepared somehow to factor in the federal contribution and then to weigh it in terms of representation for the native people involved. That might be another way of doing it. But this seems to me to be a straightforward way, at least for now, to respond to that situation.

I would hope the minister would consider it. If he does not, if we lose the vote, I hope at least that it would become a very early item on his agenda to get something done about it on one basis or another because it is a critical moral issue, I think, with respect to the participation of those native people in determining the education that their own children get under board jurisdictions.

Hon. Mr. Ward: Just very briefly, I appreciate the fact that Mr. Hampton did intend to raise this during the course of the second reading debate, and that because of the schedule and some delays, he was unable to be present.

The difficulty that I have in dealing with this particular amendment is not so much the intent or the sentiments expressed, but my not having had the opportunity to engage in any sort of dialogue or consultation with the groups that are specifically affected. Section 165 of the act relates to additional representation above and beyond that which would be established by and through the new enumeration process.

I would be quite happy to undertake a further examination of this proposition as put forward by the official opposition, and given that it relates to a section of the act that is outside of what we are dealing with in terms of the trustee distribution, surely we could look at that in the context of the ongoing review of the act and the fact that we have another omnibus bill coming up in the fall. I would undertake to look at that further. I am just very, very reluctant to try to deal with this issue now without the benefit of that dialogue with those who are affected.

Mrs. O'Neill: I feel very strongly, in the same manner as the minister, and I did not even know what he was going to say, but I feel that with the groups we are talking about here, in my small experience, there is difficulty getting people to represent them, and I certainly feel we should have dialogue.

Members do not come forward from the bands to sit on these boards. It is much more difficult to get people to make the commitment to the board from the native bands. That is my understanding.

I too am very much in agreement with upping their representation, but I think it would be inappropriate for us to put this into the act without having ever approached them. We always said that the native portion of this bill will be left intact. That has been from the very beginning of the discussion, even when we were talking with the committee, where the trustees' representation was from all the trustee associations. This has never come up, so as a result, we have never made any attempt to consult, and I feel that because we know there are some difficulties among the groups themselves regarding participation, we should at least consult and see if this is what they want or how they want it, or are these the numbers they want.

These boards also are boards that will likely not have schools extended, so there will be some separate school representation. What Mr. Johnston is saying is true. No matter what we do, they are not going to get a majority on the boards, but I think we should consult with them and bring it in in the fall and not much later than what we are doing here.

They could, I think, be put on to the board right away, simply because they are elected or appointed in a very different process from all the other trustees in the province.

Mr. R. F. Johnston: Just to respond before we take the vote, I would say two things. One, this initiative did not come out of Mr. Hampton's head alone, it was because he was spoken to by natives in his area about their concerns and it is an issue that has been raised with us in the past, as Mr. Allen is saying.

The second thing I would say is that it may seem not to be an active gesture to put in subsection 6, because it is only holding the status quo, but it is in fact endorsing a policy which is at odds with the principle that we have. It is not required to put it into this act, so it does recognize the issue I am raising, and it seems to me the suggestion I am making as an interim step is one which would make an awful lot of sense.

Therefore, I would like the motion to stand, but if it is defeated, I take the minister at his word that this will proceed further.

Mr. Chairman: Those in favour of Mr. Johnston's amendment? Those against?

The amendment is defeated 6 to 3.

Motion negatived.

Mr. Chairman: Because of the complexity of the subsections and the numbering business, we could now perhaps proceed a little more slowly. We go to page 6, to the subsection 2 which we deleted.

Interjection.

Mr. Chairman: Sorry. Shall section 23 carry? Agreed? OK.

Section 23 agreed to.

On section 24:

Mr. Chairman: We now go to item 2, page 6. We deleted that section. I assume that everything before that is carried.

There is an amendment to subsection 206a(3), the following subsection? No? Is that carried? OK. Is subsection 4 carried? Subsection 5? Subsection 6—we are now on page 7, OK?

Subsection 206a(1) agreed to.

Subsections 206a(3) to 206a(6), inclusive, agreed to.

Mr. Chairman: Mr. Jackson, is it the second one in your—

Mr. Jackson: Yes.

Mr. Chairman: Mr. Jackson moves that rule 6 of subsection 206a(7) of the act, as enacted by section 24 of the bill, be amended by striking out "1st day of July, 1988," in the fifth line and inserting in lieu thereof "1st day of September, 1988."

1630

Mr. Jackson: May I speak to the amendment?

Mr. R. F. Johnston: On a point of order, Mr. Chairman: I am very much going ahead with this one, but I just wanted to bring to your attention that my motion of the actual breakdown of the table of how you determine representation precedes this. But let us go ahead with this, since it has been moved.

Mr. Chairman: Go ahead. We can come back to it.

Mr. Jackson: Thank you. Briefly, I wish to comment that by this amendment we will enable school boards to make determination on the basis of actual enumeration data, and I think that is really the only responsible way to go in this regard. I would, if I may, beg the chair's indulgence and ask

the Ontario Public School Trustees' Association to come forward briefly and respond to this section.

Mr. Chairman: By all means.

Mr. Bowes: Mr. Chairman, we will be very brief on this one. On the matter of time, as currently required in Bill 125, the board has to make this decision by July 1, 1988, although the enumeration data are not required to be available until July 31, 1988, as provided in Bill 77, and this causes problems for the trustees.

Some boards at the moment desire to have a board of 20 trustees and they do not know how they can arrive at that, because they are allowed to add one or two trustees to the figure, which may be 18 or 19, but they do not know until after the enumeration data come in whether they are going to have 18 or 19, and yet by July 1 we are supposed to add one or two trustees.

If the boards had the flexibility to postpone it to September 1, they could make up their minds whether they wanted one or two. At the moment, if they have an electoral group of approximately 280,000 people, it may go up in the next couple of months, so it is very difficult for a board to make a decision on that. That, briefly, is the position, and that happens to many boards across Ontario.

Mr. Chairman: Thank you, Mr. Bowes. Is there any other discussion?

Mr. Jackson: Perhaps we could hear from the minister if he has any reluctance to adjusting this time frame. I would point out that we are proposing further amendments to subsection 206a(12) where we try to lessen the burden of the municipal clerks and more directly have the trustees themselves making a determination, and some consideration should be given to adjusting the time line if they are to complete the whole process.

Hon. Mr. Ward: Could I just get a point of clarification? Your concern was that you do not have the precise enumeration data to make a determination as to the overall board size. Is that it?

Mr. Bowes: Some boards, in fact the York region board, could have 18 or 19, depending on the data that come in, and they do not know what those data are at the moment. They want to arrive at a figure of 20 trustees eventually. By July 1 they are supposed to request the addition or deletion of one or two trustees and they have no data to go by on how to arrive at the figure.

Hon. Mr. Ward: I guess one of the concerns I have is that if we keep moving these dates further and further along in the process, there are other deadlines and other mechanisms, as well as a proposal from the official opposition for appeal mechanisms as well, that we will be considering later on. The concern I have is that we are pushing the timetable very close to running into the procedures under the Municipal Elections Act.

Mr. Chairman: Mr. Parry, is it directly pertinent to that, or do we go to the government?

Mr. Parry: It is directly pertinent to the question of time frames, and that is that probably the most important time frame there is for what the board makeup will be. To do it outside of knowing what the actual data will be is the biggest mistake that could be made through legislation.

It is true, there are some time lines being pushed ahead and being pushed aside, but in our view, to make a mistake could certainly be costly to the educational welfare of that community. So it is the most important time line and we feel we have to know when the data are available.

That may mean that the September 1 deadline is better than the July 1 deadline, because the data may not even be available as of July 31 actually, when it is supposed to be. It could actually be late. So we are saying, yes, to push ahead is a problem, but it is one of the biggest issues in the whole bill.

Hon. Mr. Ward: The other issue and the other concern that I have is that you then allow something like a 10-day time period in which you establish your size and then provide an opportunity for appeal. That is indeed a very major concern.

I do not know if the enumeration data are supposed to be available by the end of July—I understand that is the provision—then I would be willing to consider an August 1 date or whatever. Surely you have to allow the time for citizens and boards to exercise the other mechanics in the legislation. September 1 seems to me to be very problematic.

Mrs. O'Neill: I would just refer the members of the committee to page 8 of the legislation, which states the numbers to generate more trustees. As the numbers go up, we are talking about a difference of 60,000, 100,000, 200,000 people.

Surely school boards in this province have an idea within those kinds of parameters. We did this on purpose in planning this legislation so that as a board increased in numbers there would not be as much of a change, because the idea was to confine the boards to what we considered the ideal size, between eight and 20. I really think in reality changing from 17 to 18 or deciding to put two on to 17 or 18, you really would have to have a very poor idea of what your population grouping was.

Boards have got assessment roles. They have already got major ideas from their major municipalities about how many residences there are. I know there is some risk involved in who will return these sheets and who will decide to be what kind of an elector, but this seems to be a first time and, as I say, it will all be under review. I do certainly feel that the further back we push this, it is a disadvantage to the people who will be seeking election and certainly a disadvantage to the entire process, as far as I am concerned.

Mr. Chairman: Ms. Pierce, I have a list. Is your point directly pertinent?

Ms. Pierce: Yes, it is actually. I wanted to respond to the minister's concerns about pushing the time lines back too far. The crucial issue that we want with this amendment is that the boards have access to the enumeration data before they have to make their decision to add or subtract one or two trustees.

If the date of August 10 or August 15 would guarantee that they have access to that data before they make their decision, we can move it back to August 15 instead of September 1. But the whole point is to get access to that data before making decisions.

Mr. Jackson: That was going to be my point, that we are essentially

suggesting to boards that they do a wild-ass guess, a reasonable wild-ass guess, and then once the enumeration data is received then they can correct it.

It seems to me that creates an unnecessary amount of acrimony in a board, in a very political and volatile situation, where trustees are being told at the beginning of the summer that they are not going to have a seat and then possibly at the end of the summer they may find out they will have one.

It just does not seem an appropriate way to step into this highly sensitive area. For that reason, we feel that if the minister is flexible, we should either look at somehow tying the date to a time following receipt of the enumeration list, which is one option that legislative counsel can suggest the wording for, or extending the date as we have suggested. We might even insert an obligation to advise the ministry as soon as possible after receipt of, but no later than, this date. That might accommodate several things, but I think we should pause and correct it in this instance to avoid that acrimony during the summer.

1640

Mr. R. F. Johnston: I do see this as one of the crucial problems with bringing this legislation forward this year, as I have said in the House. I do place a very serious emphasis as well on how democratic the elections will actually be if you do not allow new people running a chance to get into the field at some point or other and to know where they are running.

I have real problems with the heavily weighted incumbency that is already out there, let alone adding more to it. I thought I heard the minister suggesting that maybe there was some possibility of flexibility here and I would like to suggest that maybe we should try for a mid-August date, at which time the boards, hopefully, will have that information.

I would point out that in the future this will not be a problem; but another problem will take place, and that is that you will be working on year-in-advance figures. In some of the growth areas of this province that will cause a bit of concern as well, perhaps as large a concern as we may have here with the first trial runthrough.

I would just want to test out with the minister, if I might, whether or not an amendment to the amendment would be in order, which might hit upon August 10 or something like that. Is that what you were suggesting, Frank?

Mr. Williams: You have just hit on a point that I was going to bring up. September 1, I think, would put us completely out of the picture. I think you need to move it back a bit further, if you are going to do it at all, otherwise there just is not enough time.

Hon. Mr. Ward: May I amend my amendment by inserting August 10 and removing September 1?

Mr. R. F. Johnston: Sure, that is your own friendly amendment.

Mr. Chairman: So you are suggesting that we read your amendment to say—

Hon. Mr. Ward: The 10th day of August. I will support the amendment to August 10. I do want to make the point, however, that in terms of the distribution mechanisms in every subsequent election process, the time for making that determination is fully one year prior to the election date.

I know there is obviously a sense of urgency as to the preciseness of the enlargement of many, many boards in this province and I would also point out that I think this bill will expand the number of trustees by, in all probability, somewhere like 300. But I also want to assure you we are all looking forward to that as well.

Mr. Chairman: So the amendment we have before us is as written on your sheet except that the 10th day of August replaces the first day of September.

Motion agreed to.

Mr. Parry: If I may, Mr. Chairman, one of the concerns that does fit in with this is that it is also a new electoral process, to some extent, with the new forms going out. That could have an impact. That was a concern we had not raised. It does fit into all this.

I moved today a little bit ahead of time. It does give us at least some breathing space, if and should there be any problems with that, and I understand there are not many problems with it.

Mr. Chairman: We do appreciate that. Cam, are you addressing that or your other amendment?

Mr. Jackson: I have a further amendment to my amendment on this one. You guys are moving so fast.

Mr. Chairman: OK. We are still on rule 6. We have from you another amendment referring to rule 6. You are not talking about that? What is your other amendment?

Mr. Jackson: I will try to explain, Mr. Chairman. I have submitted to all members of the committee an amendment to subsection 206a(14), which I now realize surfaces in this section, the one we were just dealing with, subsection 206a(7). I have it in subsection 14, but I also believe this would have been a housekeeping amendment and legislative counsel would have advised us of such, but I may as well deal with it now if I may.

Mr. Chairman: Just for my information, is that the fourth sheet?

Mr. Jackson: Yes.

Mr. Chairman: Okay. It is the fourth sheet of Mr. Jackson's amendment. And it refers to what?

Mr. Jackson: If you wish, we could decide not to complete subsection 206a(7) and then it will be in subsection 206a(14) and we can come back and I can address my concerns.

Mr. Chairman: This other one of yours refers to rule 6 that we were in, does it not?

Mr. Jackson: Yes, it does.

Mr. Chairman: Would it be possible for us to deal with rule 6 first?

Mr. Jackson: Why not? I am sorry. I am out of sequence. I am in subsection 7 but you signed off 7 and I still have a further amendment to 7.

Mr. Chairman: Okay, just give me a moment, please.

Mr. Campbell: Mr. Chairman, on a point of order: Just keep in mind that there were proposed amendments earlier by Mr. Johnston. I just want to clarify that.

Mr. Chairman: I have that. Could I just take some advice here for a moment, please.

Mr. R. F. Johnston: The easiest way to deal with that, if that is the case, would be to not deal with it until we get to subsection 14 but not pass the rule of subsection 6 until we pass 14.

Mr. Jackson: Then you would have something in writing in front of you and we can go back and clean it up.

Mr. Williams: It is up to the committee how it wishes to proceed.

Mr. Jackson: With the agreement of the committee, we could stand down subsection 206a(7) and the clerk will flag us when I do 206a(14). If my amendment to 206a(14) is passed, I would like to come back and then very quickly correct that.

Mr. Chairman: Mr. Johnston, you could move your amendment.

Mr. R. F. Johnston: I move again to the same section to do with the table.

Mr. Chairman: Mr. R. F. Johnston moves that the table to rule 4 of subsection 206a(7) be amended by striking out "283,000 or more, up to and including 482,990 persons, line 19 on column 2, and 483,000 or more persons, line 20 on column 2," in the 18th, 19th and 20th lines and inserting in lieu thereof: "283,000 or more, up to and including 382,999 persons, line 19 on column 2, 383,000 or more, up to and including 482,999 persons, line 20 on column 2, 483,000 or more persons, line 21 on column 2."

Mr. R. F. Johnston: It is hard to read visually.

Mr. Chairman: First table, page 8.

Mr. R. F. Johnston: I will call Mr. Farnan out and he can perhaps give me help. If I could just explain what I am up to here, this operates on a number of levels. The first is, if you look at the table itself, you will notice a very strange increase in the numbers of people represented as you get higher. In the two figures that I will be striking out, you actually move up by 200,000 voters to determine that you get one extra trustee.

In my view it skews the notions of an organized representation by population to see that going too far. It is clear to me that was done for a couple of reasons by the ministry, one of which was to make sure that the difference between this table and the table subsequent to that, which would deal with individual boards within district boards, would not be too large. It was seen as a useful kind of thing. I am sure it worked just fine for most of the boards around the province.

The difficulty that was brought to my attention, and I am sure to the attention of members of the committee over the last little while, reflects around the Metropolitan Separate School Board in Toronto, which happens to be

the largest single board in the province and which would be the one major loser, in terms of numbers of trustees who now represent it and would represent it in the future, of all the boards affected by this legislation. It would be a maximum of 22, with the give and take that is involved in the legislation, and they presently have 24. No other major board in the Metropolitan Toronto area loses representation to that degree. The only one which loses at all is the city of Toronto, which has lost one seat maximum when you take into account that figure.

1650

I was trying to look for some kind of rationale which would deal with both the principle of representation by population and also the very different circumstances that the Metropolitan Toronto Separate School Board is under in the Metropolitan Toronto area, and that is that its representative area is much larger than all of the other individual boards and yet its number of representatives would be only equivalent to that of the city of Toronto's public board under the existing table.

I was wondering if we could do a couple of things. One would be to move towards a different system on table 1, which would have had the same increase after you get past 15 representatives on a board, so that you just increase by 67,000 at all times. That would seem to me to make more sense because you then would not end up with a situation where trustees in that board were representing many more thousands of people than were represented on the city of Toronto public board, as an example.

It was pointed out to me by legislative experts that this would cause serious problems for the composition of the individual boards down below on the next table and so I withdrew from that. Another notion would have been to have given them parallel representation or put a maximum number on their representation which would have said there could not have been more trustees elected to the Metropolitan Separate School Board than there are councillors to the Metropolitan Toronto council. That would have capped it at a maximum of 28.

The difficulty with that was that nowhere else in this act is there any necessary connection between a municipal boundary, therefore a Metro councillor, and that for at trustee. Therefore, that would be drawing boundaries which were not necessarily appropriate.

So I came up with this approach of moving to a 100,000 increment figure rather than the 200,000 for perhaps as rational a reason as that which put it at 200,000 in the first place, and that is to say that this would mean the separate board would drop by only one representative in the new system as compared with what it has presently, which is the exact same kind of problem that the city of Toronto board has had to face with its reduction of one.

It seems to me that the rationale for the 100,000 is an easier one to understand and comprehend out there than is a sudden jump to 200,000 electors, now deciding that you get one extra representative when, for the first 15, all you need is 50,000. It strikes me that is reasonable and I hope the minister will be open to this very artful compromise that I have come up with.

Mr. Chairman: Any discussion of Mr. Johnston's amendment?

Mr. Jackson: I need the chair's guidance. Upon reflection and having listened carefully to the compromise as presented by my colleague the member

for Scarborough West (Mr. R. F. Johnston), I feel the concerns that our party has with respect to the Metropolitan Separate School Board representation may not be equitably addressed with his amendment and therefore we wish to table further amendments. I seek your guidance, given that Mr. Johnston perhaps could clarify if his amendment was tabled for that reason or was more broadly based? If not, I wish to submit our amendments, since they call for a board to have an exemption from subsections 4 and 6 of section 7.

Mr. Chairman: For what reason? I missed that part of what you said. Sorry.

Interjection.

Mr. Chairman: To be honest, I realize it is best for Mr. Johnston.

Mr. Jackson: Perhaps we could call forward the Metro board to make a brief presentation on the whole area of—

Mr. R. F. Johnston: I think what would be appropriate is what Mr. Jackson is suggesting, that we ask the separate board representatives to come up at this point. I had considered moving the amendment which Mr. Jackson is putting forward here, but in discussions with various officials and for some good reasons of policy as well, I felt this would not be passed and therefore I was already taking the steps to other amendments to speed up the process here this afternoon rather than to move this, lose this and then take the steps back to the position I have come to.

What I respectfully ask, if the members and the board are agreeable, is that we would hear them out in terms of their rationale and then we might take the vote on my amendment first, if that were all right with the member, because I do not think his amends my amendment; in fact, it strikes out the intent of my amendment. If mine is defeated, then we can move to his, with people understanding what their choices are in advance of that. If mine is passed, then we do not move to his. Would that be all right with you?

Mr. Jackson: No. If he is asking me to respond to my amendment, which I am about to present, I merely want to point out that I believe the bill could accommodate both our recommendations, since his amendment does not specifically name the Metropolitan Separate School Board. I just did not want Mr. Johnston's response, that we were given an option to go one way or the other, that I would in fact be tabling the amendments.

If you wish to limit discussion, fine, but I feel strongly enough that the Metropolitan Separate School Board is being disenfranchised in this regard. Perhaps the minister might even agree with my definition of the disenfranchisement.

Mr. R. F. Johnston: There is no problem with that from my perspective.

Mr. Jackson: Thank you. I do not mind whose is dealt with first. May we call the Metro separate board forward?

Mr. R. F. Johnston: If I might be helpful on this, it strikes me then what we will do is we will call the board up to explain what it would like, why it has put forward the position Mr. Jackson is going to come forward with and have any comments about what I am putting forward as well, and allow

the board to deal with the package. My amendment should be dealt with first, because it is separate and distinct from what Mr. Jackson is putting forward. Then if he still wishes to move his amendment at that time, he may do so and we will proceed in that fashion.

Mr. McGuinty: Are there other boards in the province in a similar situation to our knowledge?

Mr. Bowers: There are some boards that will be losing membership as a result of the implementation of the schedule.

Mr. McGuinty: Would this be a precedent then that perhaps would give rise to similar pleas from other bodies?

Hon. Mr. Ward: Just on the point for Mr. McGuinty—and if I leap to Mr. Jackson's amendments and just disregard Mr. Johnston's for now—I think what is being suggested that a board be exempted from the provisions of the bill and that individual, precise legislation be brought into place to structure that particular board.

That is the situation as it is today throughout the province. There are a number of mechanisms and there are a number of pieces of legislation that establish various boards of education. From a policy point of view, we have tried to provide some sort of consistent basis, with a fair degree of flexibility, I might add, with the amendments that are in here now, so that everyone at least is operating under the same rules.

Frankly, I have to say there are a number of boards in this province that will be losing trustees, that will be going down in size.

Mr. Chairman: Might I suggest this? We have an amendment before us. Mr. Jackson's will be later. Could we ask the representatives of the board to come forward?

Mr. R. F. Johnston: Yes, please invite them up immediately.

Just to answer Mr. McGuinty, the difference is this is the only board that has more electors presently, as of the 1986 figures, than the cap on this. That is the difference. They have 565,000.

Mr. Jackson: Did you allow a debate, Mr. Chairman?

Mr. R. F. Johnston: It is just a point of information for Mr. McGuinty. That is why it is a different matter from the rest of them.

Mr. Jackson: Then allow me. It will be exposed during the presentation that this is a unique situation where the coterminous public board has a two-tiered structure. The presentation we are about to hear will present cogent arguments with respect to an imbalance factor which is inappropriate for Metro Toronto between separate school representation and public. That is a piece of information for Mr. McGuinty which I have augmented from the minister and Mr. Johnston.

1700

Mr. Campbell: On a point of information, Mr. Jackson is a good baseball player. He slides into the debate. I do not mean to be disrespectful.

Mr. Jackson: You are being disrespectful to the chair. I asked the chairman if he was going to have a debate, failing which, to call forward Toronto. What is your ruling, Mr. Chairman?

Mr. Chairman: Could I hear the point of order first?

Mr. Campbell: The point of order was that if we are going to proceed with calling the group, then let us go and not engage in a debate. That is what I was trying to say nicely, not being disrespectful.

Mr. Chairman: We are considering the amendment that is before us. We will later consider these other amendments that have yet to be placed before us.

I would be grateful if representatives of the board would come forward. I would also be grateful if you would clearly state your names, please.

METROPOLITAN SEPARATE SCHOOL BOARD

Ms. DiGiovanni: Thank you. I am glad we finally made it up here.

My name is Caroline DiGiovanni. I am chair of the Metro separate board. This is Norbert Hartmann, who is the head of our planning department. Our counsel is Peter Lauwers. Also present in the audience are trustees Connie Micallef, Agnes Potts and Father Carl Matthews. Supporting our position also is Earl McCabe of the Ontario Separate School Trustees' Association.

I think we have distributed our blue binders to every member of the committee. We have spoken to a number of you already, so you know our full position. I will be brief now and just go through the main points of it, so you will understand our position at the moment.

We are in agreement that representation by population is the sensible way to go and we feel that is an initiative we can support fully. The problem, as has been pointed out so far in the debate, is that it does not really work properly for the Metro separate board here in Toronto, because we are beyond the cap. Therefore, a large portion of our population will not be represented within the 20-member configuration. So we need to pay attention to that particular section of the bill which does not suit Metropolitan Toronto separate school ratepayers.

We are not so much concerned about the number of trustees who may be lost, but we are concerned about the lack of representation as compared to the representation that is guaranteed to the public board ratepayers. I think if we can just focus on that as the important point, that is really what we are here about.

The public ratepayers in Metro Toronto will be one trustee to 16,700 constituents. Our ratepayers will be represented by one trustee for 25,800 constituents. That leaves a discrepancy of 9,000, which is really too high and is not representation by population for our purposes. We are the only board in the province in this position, because we are the only board that exceeds the cap of 483,000. In fact, we are closer to 600,000. We need to adjust somehow the representation so that proportion of our population also has trustees.

I think you should know also that our trying to conform to the cap of 20 does not permit us to identify with any clear municipal lines. We are betwixt and between. In fact, in a low population area such as East York here in Metro

Toronto, we do not even generate proportionally a full trustee representation. According to the formula as it is applied right now, we would have to penalize a section of the Metropolitan map that would give us the rest of the equivalent for a full trustee. That does not seem fair to our ratepayers either.

I think the map of Metro is another problem in all of this. We would like to be able to identify, as is supposed in this legislation, with municipal boundaries, but we cannot conform that way with the number in the cap that you are proposing right now.

Finally, the equitable distribution of the 21-trustee model is not possible, because some municipalities will only have half of the entitlement rounded up or rounded down, and that really presents problems, not only at election time but, once again, in representing the population adequately.

We have offered in the course of our brief several alternatives. I think what is before you now is a very viable alternative you can look at. Our optimum position, however, is to allow the Metropolitan Separate School Board act to stand, because that has given us over the years the ability to adjust our own boundaries and to relate our population to the representation in a way that we can live with, that our ratepayers can conform to and that at election time makes sense.

We are distressed, as we have been since the first discussions of this bill, with the elimination of those clauses of the Metropolitan Separate School Board act which would allow us that freedom. We have behaved responsibly all the years that we have had that in front of us. I think if it were restored or allowed to continue, it would really be our optimum position.

The idea of conforming to the Metro council map—a fairly new vehicle right now because this is the first year that Metro elections will be direct to the public—also cropped up. That is a possibility. It brings our numbers to 28. I think Mr. Johnston pointed out quite clearly that that is a large number and may be difficult to work with. We would probably want to adjust it downwards, but that is there.

I think what is before you right now offers us some clear possibilities and probably offers you a way to guarantee at least a minimum of increased support for our board, that is, to adjust the table of distribution in the way proposed. Our optimum would be to be allowed to maintain the Metropolitan Separate School Board act clauses, which give us flexibility in setting numbers and boundaries.

That would be our most favoured position, but failing that, the minimum that is proposed now with the changes in the distribution of the tables would be acceptable to us. At least we would be able to go back to our ratepayers and admit we had a hearing here, we had been given a fair time to express our views and in the end, we have achieved a small amount of progress in terms of representation.

Mr. Chairman: Thank you, Ms. DiGiovanni. Mr. Tatham.

Mr. Tatham: Some of our questions were answered, but I am wondering what number you think would be a fair number as far as a cap is concerned.

Ms. DiGiovanni: To us?

Mr. Tatham: Yes.

Ms. DiGiovanni: We have worked out a table that went all the way up to 28. Shall we start with that?

Mr. Tatham: Well, 28 people seem to be quite a number to—

Ms. DiGiovanni: Very large.

Mr. Tatham: Right.

Ms. DiGiovanni: We have 27 now because we have 24 anglophone trustees plus three francophone trustees. If we could achieve something like that, I think it would be fair. We are representative across Metro, and if we could keep that number, including the francophone trustees, I think it would give us the kind of board we are used to. Also, it is a fair representation across Metro. We share with all the other boards in the province that expressed to you distress at making these decisions before we have enumerations, but in any case, that is history.

Mr. Tatham: As you gain more population, more members, what happens then?

Ms. DiGiovanni: I think we would continually make sure that the representation was in keeping with fair representation at the public board level.

Mr. Tatham: Would 28 be the top?

Ms. DiGiovanni: Yes. Absolutely.

Mr. Tatham: Wether or not you double in population?

Ms. DiGiovanni: Our projections are that the population will not double. Our projections for school populations have been extremely accurate in the last many years and I do not believe we will be doubling in population. Other areas outside of Metro are growth areas but Toronto is different. We are fairly stable.

Mr. Campbell: First of all, when you say "distribution of trustees" is the issue based on municipal boundary integrity within the region or within Metro? I come from a region, so I call it a region. You will have to excuse my terminology here. Or is the issue redistribution within an area that perhaps you may not have now? I have a reason for asking the question, if you can answer that.

1710

Ms. DiGiovanni: By having to conform to an artificial cap for our board, we would have to go back to six municipalities across Metro and draw lines that do not conform to anybody's situation. As it is now, within the Metropolitan Separate School Board act, we have the right to put together two or three municipal wards and elect one trustee for those two or three municipal wards. Our ratepayers are quite used to that and we are used to that, but if we have to downsize by fractions and we are not allowed to cross municipal lines, it gives us a very awkward configuration to work with.

Mr. Campbell: Are you saying you are not allowed to cross municipal lines, like confined municipalities, let us say East York and Scarborough for the sake of example? You do not do that now?

Ms. DiGiovanni: Pardon me?

Mr. Campbell: You do not cross municipal lines now and each one of your members has an integral member.

Ms. DiGiovanni: We do not cross municipalities within Metro. We do combine wards within each municipality.

Mr. Campbell: Yes. We do where I come from too. I just wonder if I might ask through ministry representatives is that the exception to the rest of the province? I know where I come from a number of municipalities are combined, for the sake of this discussion, in one ward or one electoral area.

Mr. Bowers: We provided in the legislation that it would be possible to combine only adjoining municipalities or adjoining electoral areas, not to adjoin an electoral area which was not a municipality to a municipality. It was not, for example, possible to take the borough of East York and attach it to a ward in Scarborough. It was seen that that would not, reflected in many circumstances across the province, reflect the requirement of a community of interest. The Metropolitan Separate School Board situation is not unique in that regard. As I understand its practice, it currently does not cross municipal boundaries to create its electoral areas, nor will it be permitted to do so under the new legislation. That is a zero change for it.

Ms. DiGiovanni: Could I ask Mr. Hartmann to comment, please?

Mr. Campbell: Mr. Hartmann may want to ask a question, but let me be clear in my own mind. What you are saying is that under the present situation, they are not allowed to cross inside municipal boundaries. Is that what you are saying?

Mr. Bowers: My understanding is that the Ontario Municipal Board orders that have governed distribution of trustees have not done that.

Mr. Campbell: OK. Is there anything then in this new formula that does allow that to happen?

Mr. Bowers: In this new formula, we prevent it from happening. I am talking here about the Metropolitan Separate School Board. In Ottawa, there has been an OMB order that has allowed them to combine a ward in Vanier with a ward in Ottawa. That would be specifically prevented under the new legislation.

Mr. Campbell: OK. That is my point, that when you are dealing with this thing, that everybody be dealt with in the same vein in the province. That is what I was coming down to, but I wanted to make sure I was on solid ground when I was saying that. I will withhold any other comments until—

Mr. Chairman: Legal counsel first, then Mr. Hartmann and then Mr. Cousens.

Mr. Williams: I have a comment, I guess, that is appropriate to the one the member just made with respect to dealing with all the boards in the province in a similar manner. One of the key points of this legislation is that people be dealt with in a similar manner across the province. I think one

thing the committee has to keep in mind, although the committee can decide what it wants to do ultimately, and that can be challenged in the courts, is that if you start treating an individual board in a different manner from any other board in the province, it could get into possible charter challenges. I think that is something the committee has to keep in mind as well.

With that in mind, continue your comments and your debate.

Mr. Hartmann: If I may, Mr. Chairman, just to clarify, as legal counsel has pointed out to you, we have the right presently to cross municipal boundaries. We have never exercised that right under the legislation. Mr. Campbell asked if there was anything different that is occurring. There is something significantly different happening in the legislation as proposed; that is, the rules for distribution that are being put into effect require us now to distribute our population on the basis of proportionate representation in Metropolitan Toronto.

Currently, what we can do as a board is put trustees in wards that make sense for representation geographically, politically and electorally. What we are required to do under the rules for distribution is to assign them proportionately, and what that does in Metropolitan Toronto is a very interesting thing. I think if those of you who have your brief in front of you look at comment 4.1, you will see that the proportional representation of the 21-trustee model would require 0.6 of a trustee in East York, which would have to be rounded up to one; 3.5 of a trustee in Etobicoke, which would have to be rounded down to three; 4.78 in North York, which would have to be rounded up; 3.67 in Scarborough, which would probably have to be rounded up; 5.7 in Toronto, which would be rounded up; 1.65 in York, which would have to be rounded down.

So you have the interesting phenomenon in Metropolitan Toronto where fractional entitlements are working in two directions. For some municipalities, their representation is increased; for other municipalities, their representation is decreased. That is what is significantly different about this bill. The rules for distribution combine with the nature of the cap.

Mr. Campbell: I do not wish to debate it but I want to follow up on that comment, because my understanding is the school board represents people, not municipalities. I just want to get it clear in my own mind, because that is originally why I asked the question. Do you represent municipalities or do you represent electors? I just want to be clear on what you are saying.

Mr. Hartmann: Clearly, we represent electors, but the way the rules for distribution are set, you set for each ward in Metropolitan Toronto an entitlement and that brings up those kinds of fractional numbers that you have to deal with differentially across the city.

Mr. Campbell: I understand that.

Mr. Cousens: Very briefly, I am a strong supporter of the intentions that are being raised by the Metropolitan Separate School Board because of the need for equity. It is just basic equity that they are looking for.

I would like to hear from the minister, if at all possible, in response to it, to give us an idea of the intentions that he has as to the points that have been raised by the chairman of the board and others. If the minister has some way in which he is prepared to help to build a compromise into the legislation, I would be most pleased, and maybe it can cut short some of the debate on this.

Mr. Tatham: I sort of follow on Sterling Campbell's remarks. Does it really matter, as long as the people are represented, whether they live here, here or here? Just draw the line around. Does it really matter?

Ms. DiGiovanni: I think in terms of Metro, it certainly does, because the public boards have been given a great deal of consideration so that they may maintain their presence in the municipalities in which they operate. We would like also to conform to the municipalities and be representative but we work as a Metro board, so we need to have some provisions to provide fair representation across the whole of Metro and, at the same time, be able to stand up for the concerns that are of a municipal nature within the Metropolitan boundaries.

Hon. Mr. Ward: Just very briefly, I have heard it said a time or two during the course of this discussion that the Metropolitan Separate School Board is being treated differently or is the only one that is adversely impacted.

I think, in fairness, it has to be acknowledged that many other boards throughout this province are impacted the same way, particularly when they are operating on an upper-tier basis, as they do in many other parts of Ontario, whether it be London, Middlesex, Hamilton-Wentworth or whatever.

The reality is that area municipalities within upper-tier structures will have a variance in terms of the representation's either going up or going out, because we have made a switch from a system based on assessment to one based on population.

There will be changes because of that shift and, frankly, I think we have provided appropriate flexibility. If the argument is that one Metropolitan separate trustee has to represent a larger number of people, I think it also has to be recognized that if you look at the upper-tier representation within Metro Toronto, you will have one Metro trustee representing some 70,000 people.

Again, I understand the concern of the Metropolitan Separate School Board. We have discussed it at length. I think Mr. Johnston's amendment is probably so convoluted I cannot come up with a rebuttal and it should probably be entertained, if only for that reason. But I really do not think that Metro separate is receiving any different representation or treatment from any other board in Ontario.

1720

Mr. Chairman: Could I draw attention to the clock? The clock there, of course, is an hour slow.

Mr. Cousens: Specifically, if the minister would be so kind, there were several points raised by our guest. On the point that the public ratepayers have trustee representation of one for 16,700 constituents and the separate ratepayers one for 25,800, could you comment on that and do you agree with it?

Hon. Mr. Ward: The Metro public school boards have a two-tier system and the Metro separate board has a single-tier system. If you look at the representation on Metro public at the upper-tier level, they have one trustee for 70,000 people.

Mr. Jackson: But they sit on both councils.

Mr. Cousens: I think what the minister is doing is responding and it is good to get him on the record for Hansard. I am just concerned with the legislation now requiring the 21-trustee model, just limiting it to that. Is there any reason why you would not increase the number of trustees on the separate board to a bigger number to allow for better distribution?

Hon. Mr. Ward: The point of the exercise was to provide representation by population which establishes—

Mr. Cousens: But they are concerned that they are not going to get that representation right now.

Hon. Mr. Ward: I am satisfied that the Metropolitan Separate School Board will be able to adequately reflect and represent the ratepayers within the area municipalities of Metropolitan Toronto.

Mrs. O'Neill: We wanted to have as much internal decision-making as possible in this act and we knew that every board in this province would have to do some internal decision-making. You have some difficult decision-making to do, but you have the flexibility of one or two to help you round off some of these figures.

I have a lot of difficulty when you say that you have reached beyond the cap because it says "or more persons." We know that 483,000 is not the population of this area. So we put "more persons." I find it difficult when you say you are not covered by this.

Ms. DiGiovanni: If I may respond to the reasoning that indicates we are beyond the cap, there is no other municipality anywhere in the province that goes as high as 600,000 in a direct election model. The Metro public board is elected by representation from the municipal boards. We are directly elected and therefore our elections should be reflected in the numbers. This one trustee for 16,700 does not adequately weigh against one trustee for 25,800 in a direct election model.

We are the only place in the province that goes so high and, therefore, we think that the adjustment to the increments on the table is a fair way to approach it because then, in fact, you are at least giving a rationale for why the cap is where it is. I think you have provided the possibility to increase by two or decrease by two and that is a good flexibility which did not exist previously. But now the important place to work is in that table that produces the cap.

Why should it be line 20 if there is a municipality which goes so far beyond the top level of that that it needs to generate one more row or line? I think that something along those lines makes perfect sense.

Mrs. O'Neill: There is 200,000 between lines 19 and 20 and your population is somewhere around 540,000, as I understand it, so we are talking beyond that. As far as adjusting all these figures is concerned, I think the minister and our ministry officials have indicated that there would be several boards affected and that certainly would be a step backwards in fairness.

Hon. Mr. Ward: There is only one other board that would be affected by Mr. Johnston's amendment and that would possibly be Peel, with the cap in the middle on the top end. We are now up to 302 additional trustees.

Mr. Chairman: We have Richard Johnston's amendment before us. If I

can draw your attention to a change of one digit, there is a figure of "482,990" which should be "482,999."

Those in favour of Richard Johnston's amendment?

Mr. Jackson: Just as a point of clarification, I hope this does not inhibit my ability to put amendments.

Mr. Chairman: This is purely a separate item.

Motion agreed to.

Mr. Chairman: Now we can move to Cam Jackson's amendments, which you have before you, the ones recently distributed.

Mr. Jackson moves that section 206a be amended by adding the following subsection:

"(7a) Rules 4 and 6 of subsection (7) do not apply to the Metropolitan Separate School Board."

Mr. Jackson further moves that section 206a be amended by adding the following subsection:

"(13a) Subsection (13) does not apply to the Metropolitan Separate School Board."

Mr. Chairman: Could we deal with the first of those items initially? Is there any discussion of the one referring to rules 4 and 6 of subsection 7?

Mr. Jackson: Since we have already had a thorough examination of this, I just wish to summarize our points. We disagree with legal counsel that there may be a charter test because it works both ways. A one-tier structure is forced to represent a ratio of one to 26,000 while another jurisdiction, which has a two-tier option, can represent a ratio of one to 16,700. In fact, the legislation, as the government proposes, forces Catholic trustees in Toronto to represent 50 per cent more people, ratepayers and children, for that matter, than their coterminous public representatives. So I do not buy the charter argument. I think it is inequitable.

I think that forcing part or all of the Metro separate board to run on an at-large basis will create confusion and disrupt certain established patterns for the separate board at a critical time in its history. The minister himself was responsible for bringing in a very significant—he has referred to it as historic—agreement in Metro Toronto, where he was willing to look at exemptions in the very delicate and sensitive area of the implementation of Bill 30, and it seems ironic that the minister would wander from that commitment in terms of his stance and his support of the Metro separate board on something as critical as democratic representation.

There will be difficulty implementing the recent agreement as signed by the Metro separate and Metro public boards. By the minister's own admission, this will require a certain consistency and commitment. This bill, in its present form, disrupts that. It disrupts that in the worst way. It is no secret that the Progressive Conservative caucus is lacking a representative in the Metro board jurisdiction but, none the less, we feel adamant and strongly on this subject.

I would ask at least all members of the governing party to be sensitive

on this recorded vote to its impact on your separate school electors in Metro Toronto. I think it is an injustice and I think that there should be the appropriate exemption as we have set forward in amendment form.

Mr. Chairman: Is there any further discussion of Cam Jackson's amendment, which is a new subsection 7a? That is the first half of one on the sheet.

Mr. McGuinty: I do not think I can support this amendment, first with regard to the comments made by our legal counsel, which I find are significant. Second, I cannot see how the efficiency of the board to represent the population will be significantly enhanced by adding to the trustees.

In my experience in 16 years as a trustee in a board of education, if there is anything I have learned, it is that there is no correlation between the efficiency of the board as such and the number of trustees. In fact, I think a case might be made sometimes that it diminishes directly with the numbers. I do not think this is being disenfranchised. I am concerned about the implications of it, both legally perhaps and with regard to other boards.

1730

Mr. Chairman: Is there any other discussion of this amendment? If I might ask Richard Johnston at least, I think we may be going to vote. This will be a recorded vote and has to do with the new subsection 7a, the first part of number 1 on Cam Jackson's sheet.

The committee divided on Mr. Jackson's amendment to section 206a, adding subsection 7a, which was negatived on the following vote:

Ayes

Cousens, Jackson.

Nays

Beer, Johnston, R. F., LeBourdais, McGuinty, O'Neill, Y.

Ayes 2; nays 5.

Mr. Chairman: Can we proceed then with the amendment which deals with the new subsection 13a, which is the second half of number 1? I realize we are going ahead here but I think we can manage it.

The committee divided on Mr. Jackson's amendment to section 206a, adding subsection 13a, which was negatived on the following vote.

Ayes

Cousens, Jackson.

Nays

Beer, Johnston, R. F., LeBourdais, McGuinty, O'Neill, Y.

Ayes 2; nays 5.

Mr. Chairman: Ladies and gentlemen, so I can summarize, may I assume that the table we discussed is passed as amended? Carried.

Item 5 is carried. We are going to hold item 6; we are coming back to it because we have an amendment.

Subsection 8 carried. Subsection 9 carried? Carried. Subsection 10 at the middle of page 11 carried.

On subsection 12, there is an amendment before us.

Mr. Jackson moves that subsection 206a(12) of the act as enacted by section 24 of the bill be amended by striking out "the person prescribed by the regulations" in the fourth and fifth lines and inserting in lieu thereof "the members of the board who represent the electoral group."

Mr. Jackson: Perhaps to address this briefly we might call forward the Association of Large School Boards in Ontario to make a very quick presentation.

Mr. Chairman: I would be grateful if you would state your names clearly.

ASSOCIATION OF LARGE SCHOOL BOARDS IN ONTARIO

Mr. Read: My name is Duncan Read. I am the chairman of the legislation and finance committee of ALSBO and I am a trustee from the region of Durham. I have a colleague of mine from the committee, Alex Cullen, who is a trustee with the Ottawa Board of Education.

We will both speak very briefly. Essentially, we are in favour of this for a variety of reasons. We understand that the person prescribed by the regulations will likely end up being regional clerk or the clerk with the largest municipality. We believe that in the interests of democracy, it is fairer to have the board itself do the determination of the size.

We believe that historically the municipal clerks did make such determinations, but that was done at a time when it was all done on a basis of property assessment and that is a relatively simple mathematical calculation as opposed to the present situation. We believe that it is fairer.

We note that the Association of Municipal Clerks and Treasurers of Ontario has gone on record with this committee, indicating that it did not want the responsibility. We further note that it would not be fair to put it in the hands of the directors of education to do that, as they would be put in an untenable conflict-of-interest situation. We submit that, therefore, the only appropriate body to do it is the board itself.

I will let my colleague—

Mr. Chairman: Mr. Read, might I, as chairman, ask you to address a particular point here? It does seem to me that one of the intents of this bill is to depoliticize the process of allocation, so that it is being done by formulae and by clerks rather than by politicians. I wonder if, in that sense—and I would like you to speak to it; that is why I am asking you—it is not, in fact, out of order.

Mr. Cullen: I have to say to you, Mr. Chairman, that if this was the will of this committee, then it would give over to other bodies its own means of redistribution. It is the Legislature of Ontario that determines the distribution of MPPs. It is the Parliament of Canada that determines the

distribution of MPs, and, indeed, it is the municipalities themselves that determine the distribution of their own aldermen.

All we are saying is: Let us be consistent. We are a level of government that has existed in continuing form longer than either of those that I have mentioned. We are accountable to our electors and, concurrent with the other amendments coming forward, with rights of citizen appeal and public hearings, we believe that it is only natural and just, therefore, that the buck stops with the politicians, because we are being held accountable, indeed as you are as MPPs, as are alderpeople—if that is the right word to use—and MPs.

So the suggestion here is, unless there is some other amendment coming forward to different acts governing this Legislature and the Parliament of Canada and the municipalities, that we be given equal and same treatment. But it has to be in the context of the other two points I made about citizen rights and public hearings.

Mr. Chairman: Mr. Cullen, you understand that I was looking for consistency within the bill, which is in fact the way the chair is supposed to operate, rather than some general consistency. But I have been listening to your arguments.

Hon. Mr. Ward: Just very briefly, relative to the notion that municipal councils do all their determinations in terms of their composition, I think it has to be noted that municipal councils can make a series of choices relative to the parameters that have been set out in section 27 through to section 38 of the Municipal Act. There are, in fact, formulae that are set out. That is the basis similar to the basis that is in here.

When we talk about the role of a municipal clerk in this exercise—and reference was made to the fact that, in the past, they made that determination using assessment data—I think we recognize just how complex a situation that was, but I think it is important to look at the clerk of the municipality in his role under this piece of legislation and through the regulations as the chief electoral officer for the election process. Frankly, I do not see anything inappropriate about continuing that practice.

Mr. Cullen: I do not think that one is arguing with the appropriateness, but a precedent has been set with respect to the Ottawa Board of Education, and not only the Ottawa Board of Education but the four area boards in Ottawa. We have the ability to go before the Ontario Municipal Board and we have exercised that ability. Indeed, even now there is an application by parents from the Ottawa Roman Catholic Separate School Board to exercise the ability of going before the OMB with a plan to distribute trustees.

All I am saying is, here we have a situation where, because of an act of this government, the whole panoply of trustee representation throughout Ontario is being altered and the people who are closest to the electors—the trustees—are being held accountable. We are asking for fair play and consistency with municipalities, the province and the federal system.

My colleague has already alluded to the fact that the Association of Municipalities of Ontario and the Association of Municipal Clerks and Treasurers of Ontario do not want this responsibility, and we are very glad to take it on.

Mr. Jackson: Two quick points: Would the financial liability for the municipality not exist, given that it participates in the decision on any

appeal, whether it be through the courts or through the OMB? Or was it ever even considered that if the decision-making were board-driven, the board would bear the responsibilities for making a mess of its own decision?

1740

Mr. Bowers: —the status quo. We have seen that whatever they had been doing would continue and with the same level of acceptability.

Mr. Jackson: That sounds wonderful, but what does it really mean?

Mr. Bowers: It means that we did not specifically go to the clerks and ask them who pays their bills when they come together.

Mr. Jackson: Of course not.

Mr. Bowers: They have been doing the process previously. When we talked with the AMCTO people, there was no concern in their minds about where the costs were and who paid the costs, when coming together to do these tasks.

Mr. Jackson: It is not a major point. I merely am trying to point out that to the degree that we are eventually—and hopefully in the next 20 minutes—going to be addressing the OMB appeal process, it strikes me that those costs will be borne by the board, if in the process of making its decision it makes an error. To the degree that the municipality makes the decision, it would therefore have to bear the costs of appearing and the loss of the clerk while he is in attendance, etc., etc.

My other point is, for those members who listened to the debate on Bill 125 in the House, I clearly documented a case in the Halton Board of Education, in which I was involved as a witness, where the director of the board of education and the clerk and municipal aldermen were embroiled in the decision to eliminate a trustee from the Halton board, specifically from Burlington.

It was a grossly political exercise, done in the full view of the media and the public. It amounted to no end of repercussions for that now-famous director, who ultimately ended up leaving the board and working for the minister doing fact-finding in the Hamilton-Wentworth separate school board dispute. The fact still remains that we are putting directors of education—

Interjection.

Mr. Jackson: Yes. He has not had an easy row to hoe, but Mr. Lavander, just to leap to his defence, was subjected to an extremely political process, by throwing him into a political arena involving clerks and municipal aldermen.

Our point simply is that the director, in his current role as supervisory officer for the board of trustees, can come to this decision because it is not any more or less political than half the decisions trustees are forced to make in any given year. The legislation implies that school boards are not mature enough to make these determinations, and that is against all the very best advice coming from the AMCTO and from the directors of education.

You know, Minister, that the Ontario Association of Education Administration Officials has advised you privately in no uncertain terms that it does not wish to have directors embroiled in this.

Interjection.

Mr. Jackson: Well, they have advised you, Minister.

Hon. Mr. Ward: I do not want to get into a lengthy debate at this point. I just want to reiterate a few points. If we are talking about the distribution of the trustees and the roles that clerks or directors or boards may or may not play and we look at it solely in terms of whatever potential there is for political pressures or for any other extraneous things along the lines that Mr. Jackson suggested, then we would have avoided at all costs moving into any sort of system that was anything other than strictly empirical.

We put that system in place in response to many of the concerns that were put forward by trustee organizations and various groups in this province, to provide some flexibility. It assumes that those will be exercised in good faith.

The role of the municipal clerk in this process is that of the chief electoral officer, whose responsibility is to conduct these elections. I am going from memory here, but my recollection is that the costs of that exercise are also borne by the municipalities involved in every way, shape and form as well. I think it is a mistake to look at the clerk's role in this as an organ of the municipality, when in fact he is functioning as a chief electoral officer. Perhaps at some point that changes.

Mr. Chairman: If we could move to the amendment, I would be grateful. I thank Mr. Read and Mr. Cullen. I do appreciate it.

Mr. Jackson: Recorded vote.

The committee divided on Mr. Jackson's motion, which was negatived on the following vote:

Ayes

Cousens, Jackson.

Nays

Beer, Johnston, R. F., LeBourdais, McGuinty, O'Neill, Y., Tatham.

Ayes 2; nays 6.

Mr. Chairman: Is subsection 12 carried?

Some hon. members: Carried.

Mr. Chairman: Subsection 13?

Some hon. members: Carried.

Mr. Chairman: Mr. Jackson moves that subsection 206a(14) of the act, as enacted by section 24 of the bill, be amended by,

(a) adding after "board" in the first line "after holding public hearings on the matter"; and

(b) striking out "three quarters" in the second line and inserting in lieu thereof "a majority."

Mr. R. F. Johnston: Can we split the two?

Mr. Jackson: Split? Division? Agreed.

Mr. Chairman: Clauses (a) and (b) have been split, OK? Would you care to speak to (a)?

Mr. Jackson: I would just like Alex Cullen to briefly approach the microphone and give a short explanation on behalf of the ALSBO.

Mr. Cullen: Unfortunately, we skimmed over subsection 13. I may be out of order, but there was an issue raised by Mr. Bowers that affects —

Mr. Chairman: You are.

Mr. Cullen: I am sorry, I will leave it.

With respect to the affirmative vote of three quarters, quite frankly, it would be rather unique in the Education Act to have such a requirement for any vote of any board. Nowhere else in the Education Act do you have this requirement. We can pass budgets—my board passes budgets of \$220 million—we can hire and fire teachers, we can engage in collective bargaining and we can close schools and transfer schools to other boards with majority votes.

The suggestion here that in this context and only in this context of trustee distribution we require a vote of three quarters flies in the face of the ability of a school board to conduct its business. As I say, it is unique and totally unnecessary.

Mr. Read: First, I will not repeat my colleague's comments. They are well said. My second point is that there may be some argument in terms of the rationale for the three quarters in that it would be in there to prevent larger municipalities from ganging up and doing their own form of gerrymandering on smaller municipalities and therefore bashing the rural townships, as it were.

I can simply suggest that, based on the experience of my own board, which has nine municipalities in it, including three rural townships, if one absolutely wanted to protect one of the smaller of them, three quarters would not be a high enough number. Being realistic in terms of appropriate things and being consistent with all of our other responsibilities, I think the 50 per cent rule would be appropriate, as long as there is some other mechanism for electors to appeal.

Mr. R. F. Johnston: I just want to say the reason I wanted this split between (a) and (b) is that I hope all of us would be in agreement that there should be public hearings held on this matter. I sense some sort of firm stand by the government on the three-quarters matter and that is why I wanted this split, to deal with that.

Hon. Mr. Ward: I just want to speak very briefly to both. On the first point, relative to the notion of the public hearings, frankly, I do not support the amendment and I do not believe it is necessary. Boards may choose to exercise that option, which is certainly within their right. I do not believe it is necessary to dictate it, though.

On the second point, relative to the three-quarters majority, it is fair to say that indeed the bill is arbitrary in that respect. We wrestled for some

time trying to make a determination on how we could come up with a mechanism that would provide some flexibility. The reason for moving towards a three-quarters majority was in fact to protect the interests of minority groups within that board context. It is felt that by having a 75 per cent provision, then the interests of minority groups on the board are more likely to be protected from any attempts at gerrymandering.

1750

Mr. Jackson: The main reason for promoting (a) is that it is possible for a board to deal with this in committee of the whole and announce it with limited prepublication. What concerns me is that the whole process is occurring during the summer. There are several trustees in the room, both on committee and off, who will tell you that it is not a great time, during the summer, to make the public aware of any decisions of a school board.

Decisions of this magnitude should be subjected—and I am pleased that my colleague the member for Scarborough West (Mr. R. F. Johnston) is in concurrence with the notion of this being done, fully exposed for public input. I support fully the notion that the three-quarters vote is abnormal. I think it is inappropriate to start tampering with the 50-per-cent-plus-one, simple-majority rule. That is all we will comment. We fully support it and we will ask for a recorded vote.

Mr. Cullen: Very briefly, Mr. Chairman, on the issue of public hearings, there is a precedent. School boards, according to a memorandum from the ministry, in closing a school, must hold public hearings prior to any board decision on that matter. The consistency that I asked for earlier among the municipal, provincial and federal levels also applies here. Before there is any redistribution of trustees by a municipality, of MPPs by the Legislature or of MPs by Parliament, there has to be hearings. Indeed, I have participated in hearings, and probably others have as well.

All we are suggesting here is that the electors, the ratepayers for whom we are supposed to have proper representation, should have the opportunity to present their views to the board.

Mrs. O'Neill: The first thing is that any board can hold a public hearing on anything it wants to, and the minister, in his letter to the directors, has indicated he hopes the boards will help their electorate become much more familiar with this legislation when it passes.

The second thing is that we have very specific rules in the Education Act about what can be dealt with in committee of the whole. My understanding is that this in no way would ever fit into those categories which have to do with personnel, acquisition of sites and collective agreements, that kind of thing.

The other business regarding 50 per cent plus one: Most boards in this province have at least a two-thirds majority for the changing of their own bylaws. This is more serious than the changing of bylaws.

Mr. Chairman: I would like to call amendment (a).

The committee divided on Mr. Jackson's motion on (a), which was negatived on the following vote:

Ayes

Cousens, Jackson, Johnston, R. F.

Nays

Beer, LeBourdais, McGuinty, O'Neill, Y., Tatham.

Ayes 3; nays 5.

The committee divided on Mr. Jackson's motion on (b), which was negatived on the following vote:

Ayes

Cousens, Jackson.

Nays

Beer, LeBourdais, Johnston, R. F., McGuinty, O'Neill, Y., Tatham.

Ayes 2; nays 6.

Mr. Chairman: Can we carry subsection 14? Carried.

Mr. Jackson, if you like, we can go back now to rule 6.

Mr. Jackson: No, it was defeated.

Help the chair. I am doing fine.

Mr. Chairman: Can we go back to rule 6? Carried as amended.

Mr. R. F. Johnston: I think we need a motion to reopen subsection 13. There is an amendment, I understand, but Mr. Jackson will know better than I about that.

Mr. Jackson: Where are we? Somebody help me out.

Mr. Chairman: Do we have unanimous consent to reopen? Agreed.

Mr. Jackson moves that subsection 206a(13) be amended by:

(a) in rule 3.2, the second line, strike out "within a municipality", and

(b) in rule 4, in the fourth line, strike out "within a municipality,"
and

(c) add rule 5 as follows: "For the purpose of applying rules 3 and 4 of subsection (13), the adjoining electoral areas may be in different municipalities."

Does everyone have this written amendment? It is page 12, item 13.

Mr. Jackson: I would like Mr. Cullen to very briefly respond to this.

Mr. Cullen: My colleagues from the Ottawa area will fully know that the city of Ottawa surrounds two municipalities, the village of Rockcliffe Park and the city of Vanier.

The village of Rockcliffe Park has 1,300 public school electors and 226

separate school electors. The city of Vanier has 2,363 public school electors and 13,000 separate school electors.

They can only be subsumed in the electoral process through being attached to neighbouring city wards. Indeed, the city of Ottawa ward, By-Rideau, surrounds the village of Rockcliffe Park. The city of Ottawa ward, Overbrook-Forbes, surrounds the city of Vanier.

What this legislation would do, and I am told that it has some impact on Metropolitan Separate School Board, is preclude us from combining those to the neighbouring wards, which would have the effect of requiring a trustee to be elected to represent 1,300 public school electors in one situation and 2,300 in another.

What the amendment seeks to do therefore is to permit this board, or other boards that are affected, to combine adjoining municipalities with adjoining wards if it is the wish of the clerks involved, according to the process that we have.

Hon. Mr. Ward: I understand fully the point being made by Mr. Cullen. It has been made by others and was given very, very careful consideration, but I think you also have to look at the other side of the coin in terms of many of the concerns that are expressed.

There will be municipalities such as, if I can use it as an example, the town of Caledon in the region of Peel that I am sure would be very, very concerned with the suggestion that a provision could be put in place to attach that municipality to, say, a ward in Brampton or some other Peel area municipality.

I guess the point I would make is that I understand Mr. Cullen's argument. It does cut both ways, though. Frankly, our preference is to avoid those situations where small municipalities in a board's jurisdiction can be swallowed up through this process.

Mr. Cullen: I fully concur with the minister's remarks. But what relief will he give us in Ottawa where it is a question of two very small municipalities being totally surrounded by the city of Ottawa, which is rather unique to Ontario, and as a result of the legislation means—

Hon. Mr. Ward: I will just quickly answer it. I suppose the only relief that is available is that the board can exercise the option relative to the alternative distribution and utilize the additional one or two members to provide representation there.

Mr. Chairman: Could I just do something mechanical first? I would like to ask for unanimous consent that we go beyond six for perhaps 15 or 20 minutes.

Mr. Tatham: I have a meeting.

Mr. Chairman: I do need unanimous consent.

Interjection.

Mr. Chairman: We have been directed to do it.

Mr. Jackson: Could I just have a minute here? We only have two members here.

Mr. Chairman: Do I have unanimous consent for the 15 minutes? OK.

Agreed to.

1800

Mr. Read: I have a very brief question. I do not know even if I am allowed to do it, but since I started, I will try.

I wonder whether the remedy in terms of the concerns that my colleague was raising for those five municipalities involved might be to amend your section to simply grandfather those municipalities in.

Hon. Mr. Ward: Mr. Bowers points out that we have not consulted so how do we know that is what those area municipalities want? But notwithstanding that, there is one thing we have tried to avoid. We have gone through this debate with the Metropolitan Separate School Board situation as well. We are trying to put in place consistent provisions. At the outset I did recognize that there were a number of legislative mechanisms for establishing boards. There was a very varied set of ground rules. I do not underestimate for a moment the concerns Mr. Cullen is expressing or the impacts that it has in Ottawa, but we do want a consistent approach and that is what we are going with.

The committee divided on Mr. Jackson's amendment which was negatived on the following vote:

Ayes

Jackson, Johnston.

Nays

Beer, LeBourdais, McGuinty, O'Neill, Y.

Ayes 2; nays 4.

Mr. Chairman: Is 13 carried?

Subsection 13 agreed to.

Mr. Chairman: That takes us to 15. Is 15 carried?

Interjection: No, there is one amendment.

Clerk of the Committee: Mr. Jackson's amendment.

Hon. Mr. Ward: I think it has already been defeated in another area, has it not?

Mr. Chairman: OK.

Sections 16 to 25 agreed to.

Section 206a, as amended, agreed to.

Sections 206b and 206c agreed to.

Mr. Chairman: It is now Mr. Johnston's main amendment. That is his large amendment.

Mr. R. F. Johnston moves that the bill be amended by adding thereto the following section:

"24a. The said act is amended by adding thereto the following section:

206d(1) Upon the application of a board authorized by a resolution thereof, or upon the application of petitioners in accordance with subsection (4), the Ontario Municipal Board may, by order,

"(a) divide or redivide a municipality within the area by jurisdiction of a school board into electoral areas and shall designate the name or number each electoral area shall bear and shall declare the date the division or redivision shall take effect;

"(b) alter or dissolve any or all of the electoral areas created by an order under clause (a) and shall declare the date when such alterations or dissolutions shall take effect;" and

"(c) notwithstanding the Municipal Elections Act or section 206a or the regulations, make such provisions as are considered necessary for the holding of elections of members to the board by electors in electoral areas created or altered under this subsection.

"2 Notwithstanding clause 1(a) or (b), the Ontario Municipal Board may not create an electoral area under those clauses that contain part only of a ward.

"(3) While a provision of an order of the Ontario Municipal Board authorized by subsection (1) is in effect for the purposes of an election, the members of the board to be elected at the election by electors shall be elected in accordance with the provision of the order and not in accordance with subsection 206a(22).

"(4) A petition of 150 or more persons who are qualified to elect members to the board may be presented to a school board requesting the board to apply to the Ontario Municipal Board to divide or redivide a municipality within the area of jurisdiction of the board into electoral areas or to alter or dissolve any or all of the existing electoral areas created by order of the Ontario Municipal Board, and if the board refuses or neglects to make the application within one month after receipt by the board of the petition, the petitioners or any of them may apply to the Ontario Municipal Board for the division, redivision, alteration or dissolution as the case may be.

"(5) An electoral area established by the Ontario Municipal Board under this section shall be deemed to be an electoral area referred to in subsection 206a(22)."

Mr. R. F. Johnston: Just to speak briefly to the motion, I have in my speeches in the House called upon the government to bring in an appeal mechanism for individual ratepayers to be able to appeal the redistribution of their boundaries as we have for the municipalities, and this does it.

Mr. Chairman: Members have the revised version of this amendment before them. Is there any discussion?

Mr. Jackson: I have a further amendment to the main amendment, by including a section, and I wonder what might be the best method to proceed.

Mr. R. F. Johnston: Are you adding a section?

Mr. Jackson: No, I am adding a clause 206d(1)(d).

Mr. R. F. Johnston: Then you would move an amendment to my amendment.

Mr. Jackson: Yes. I have also a new subsection 206d(6).

Mrs. O'Neill: Do we have a copy of that?

Mr. Jackson: Yes, it is in the package. It is actually the very end. It is basically Mr. Johnston's—

Mr. R. F. Johnston: Why do you not just read out your new clause 206d(1)(d) and subsection 206d(6)?

Mr. Chairman: Mr. Jackson moves that the amendment be further amended by adding clause 206d(1)(d), which reads as follows:

"(d) increase or decrease by one or two the number of members of a board for the next two subsequent regular elections."

Mr. Jackson moves that the amendment be amended by adding thereto a new subsection 206d(6), which reads as follows:

"(6) Where the Ontario Municipal Board makes an order under clause 206d(1)(d) with respect to the number of members of a board, any increase or decrease approved by the board under rule 6 of subsection 206a(7) has no effect."

Mr. Williams: I am not sure if Mr. Jackson has missed out part of this. I think to get in the clause 206d(1)(d) that you mention, you have to redo all of subsection 206d(4), to give the electors the right to petition to increase or decrease that number.

Mr. Jackson: All right. Given that this is—

Mr. Beer: That is in your subsection 206d(4), is it not?

Mr. Jackson: It is, but perhaps—

Mr. Beer: Because your subsection 206d(4) is different from Richard's.

Mr. Jackson: How are they different? I was trying to determine that.

Mr. Williams: The clause 206d(4)(b) is the new part.

Mr. R. F. Johnston: May I make a suggestion in procedural terms, then? Why do we not vote on the first amendment that is being produced by Mr. Jackson. If it were to fail, then one would presume that the others would? Not necessarily. But can we take it one at a time and then move through your amendments to my amendment that way? That might be the easiest way.

Mrs. O'Neill: Can we have Mr. Jackson explain clause 206d(1)(d) to us, please?

Mr. Jackson: I will call, briefly, the Ontario Public School Trustees' Association— Is it OPSTA or the Association of Large School Boards in Ontario who wishes to respond to that? Just one respondent. Come to the microphone, please. We have eight minutes to go.

Mr. Bowes: I believe it is subsection 206b(2), the right of appeal? Is that the one you are talking about, Mr. Jackson?

Mr. Jackson: Just clause 206d(1)(d), "increase or decrease by one or two the number of members of a board for the next two subsequent regular elections."

Mr. Bowes: I do not think that board has put a position on that. We have not drawn that to the board of directors. I will let ALSBO speak to that.

Mr. Chairman: Could I call the question on the amendment to the amendment, that is (d). It is actually clause 206d(1)(d).

Mr. R. F. Johnston: What we are asking is an explanation of this. I presume it is to make sure that that power of the boards, which we are vesting in them in this act, be something which can be taken to the OMB, too, that is, their right to raise it by one or two or lower it by one or two seats. It is just adding in that the things they can do, that you can then appeal to the board, would include that. I guess the discussion will come around whether or not that is seen to be an appropriate appeal mechanism.

1810

Mr. Chairman: Those in favour of the amendment to the amendment? Those against? The amendment to the amendment is defeated seven to one.

Motion negatived.

Mr. Chairman: Did you withdraw item 6?

Mr. Jackson: We withdraw it.

Mr. Chairman: OK, item 6 is withdrawn.

We are now back to Richard Johnston's original amendment, which is before us. Those in favour? Those against? Carried.

Motion agreed to.

Mr. Chairman: That takes us to subsection 206c and 206d—section 25, on page 17, am I right?

Section 24, as amended, agreed to.

Sections 25 to 27, inclusive, agreed to.

Section 28:

Mr. Chairman: Mrs. O'Neill moves that subsection 121(3) of the said act, as set out in subsection 28(6) of the bill, be amended by striking out "or otherwise participate" in the fifth and sixth lines.

Any discussion? Those in favour?

Motion agreed to.

Section 28, as amended, agreed to.

Sections 29 to 36, inclusive, agreed to.

Section 37:

Mr. Chairman: Cam, is that the second one of yours?

Mr. Jackson: Yes, except that, given the reluctance of the—I do not see any reason to submit it.

Interjection.

Mr. Jackson: No, there is no support from the government for the Metropolitan Separate School Board amendment.

Section 37 agreed to.

Sections 38 and 39, inclusive, agreed to.

On section 40:

Mr. Chairman: Mrs. O'Neill moves that subsection 40(1) of the bill be struck out and the following substituted therefor:

"Notwithstanding that sections 1 to 39 do not come into force until the 1st day of December, 1988, the regular elections to be held in 1988 under the Municipal Elections Act shall be conducted and the determinations and distributions in respect of those elections, including appeals and applications with respect thereto, shall be made as if sections 1 to 39, except section 24a, of this act were in force."

Mr. Jackson: Can we get an explanation?

Mrs. O'Neill: The explanation is that section 24a is the appeal process that we have just put in. We feel this would be very difficult to have enacted for this election, but we feel it should be part of all subsequent elections.

Mr. McGuinty: This item 40 specifically refers to the regional municipality of Ottawa-Carleton. May Mr. Cullen be permitted to make a comment on this, please?

Mr. Cullen: It is not on the amendment being put forward by Mrs. O'Neill, it has to do with subsection 40(2), which is the following subsection of the bill.

Mr. Chairman: Any other discussion of this amendment? Those in favour of this amendment? Those against?

Motion agreed to.

Mr. Chairman: Does section 40, as amended, carry?

Mr. Jackson: Mr. Cullen had a comment on subsection 2.

Mr. Cullen: Subsection 40(2) grandfathers certain boards, as a result of other activities outside of the Education Act, specifically in the regional municipality of Ottawa-Carleton. We did go before the Ontario Municipal Board on behalf of ratepayers for the Ottawa Board of Education to try and fit 12 trustees into 15 wards. We came up with a six-zone system. I have circulated material to the members earlier.

The issue here is that if this subsection is to go through, we are grandfathered, whereas other school boards will have the opportunity to distribute additional trustees. We will be stuck with having 17 trustees trying to fit into six zones that have 15 wards.

Our concern is the ability to have the flexibility that other boards would have in adjusting the number of trustees to a number of electoral areas. There are other particular groupings. There could be eight, there could be five, there could be another number. But this precludes our ability to do so.

If I could ask the minister directly, Mr. Chairman? We have an interpretation that subsection 40(1), though, gives an alternative interpretation to the act, that subsection 40(1) would allow us to exercise all the abilities that are in the sections, as if 1 to 39 were in force. That is the interpretation of our lawyer.

If this were true, then I do not have a concern.

Hon. Mr. Ward: I will ask Mr. Bowers to respond. My understanding was that subsection 40(2) came as a result of specific representation made, but Mr. Bowers could comment.

Mr. Bowers: It was a question that was raised in terms of the specific zones in Ottawa as a result of the Regional Municipality of Ottawa-Carleton Act. The understanding of ministry personnel in representation made was that the original present position in Bill 76 removed those zones and compelled elections at large, and that therefore destroyed the zone system for them.

They had had the zones as a result of their Ontario Municipal Board order and they had worked satisfactorily for them. Correcting that oversight in Bill 125, we re-established the zones for the purpose of the 1988 election. Subsequent to the 1988 election, the Ottawa Board of Education will have the opportunity to create within its jurisdiction, within the mechanisms of the bill, such electoral areas as are appropriate to the new reality.

In the meantime, the electoral areas, being the zones, will be used as the essential building blocks for representation within the terms of this bill, in the same manner that all other electoral areas that were grandfathered for all other boards will be preserved.

Mr. Chairman: Mr. Cullen, very, very briefly.

Mr. Cullen: Very briefly. It was true when Bill 76 came out, our lawyer told us that it would essentially put elections at large. So we did make representations that we did not want to lose that.

However, it is not true to say that the position of the Ottawa Board of Education is to continue six zones. The position of the Ottawa Board of Education is to have the flexibility of distributing trustees as to the most sensible combination of wards and zones possible, including 15 city wards and

15 trustees, since that is the possibility.

I am stating here the official position of the Ottawa Board of Education. All I can say is that this does not help. And indeed, the 1985 decision fit 12 trustees, which was the statutory limit, into 15 city wards. Therefore, we had to come up with the combination that we do have.

What we want today is flexibility, like any other school board in Ontario, with respect to the 1988 elections—that is to be able to go to the municipal clerk and say, as other school boards will be able to: "Here is our allotment under Bill 125. This is our variation, if we choose to vary. And this is the distribution that we want in accordance to the bill, not going any less than any ward." Never mind the problem with Rockcliffe Park.

Mr. Chairman: Any other discussion at this point?

Hon. Mr. Ward: Just one point very, very quickly. My understanding is that if you do not have a ward system now in place, you cannot move to it even under the provisions of this bill because you passed the cutoff date for the establishment of the wards. So it is not going to provide you any relief.

Mr. Cullen: That is not our interpretation from our lawyer. It is a question of distributing because you speak here—

Mr. R. F. Johnston: If I might offer a procedural point here, and that is I wonder if the ministry could help.

It would be dangerous for us to make a committee decision on this right at the moment. Why do we not pass this section as it stands at the moment and ask the ministry officials to be in touch with the legal representatives from that board, and if there is a need to amend this before we pass third reading, then we will go to committee of the whole before we do so in order to get this covered.

You may also want to add my amendment back in about the Indian representation at that time, who knows?

Mr. Campbell: Nothing is beyond the realm of possibility.

Mr. R. F. Johnston: Exactly. I suggest we pass this as it stands now.

Mr. Chairman: Subsection 40(1) is carried. Subsection 40(2)? Subsections 3 and 4 under that item?

Section 40, as amended, agreed to.

Sections 41 and 42 agreed to.

Mr. Chairman: Shall the bill—

Mr. Jackson: Were there any sections stood down?

Interjection.

Mr. Jackson: Very good; thank you.

Mr. Chairman: Shall the bill, as amended, carry?

Bill, as amended, ordered to be reported.

Mr. Chairman: Can I ask the committee before we close, would it be appropriate to arrange now to meet briefly on Tuesday for organizational purposes at 3:30 p.m. to prepare for the Ottawa visit? OK?

Interjection: You will notify us about—

Mr. Chairman: We will notify you about Tuesday.

The committee adjourned at 6:21 p.m.

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S-14

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ORGANIZATION

TUESDAY, MAY 24, 1988



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitutions:

Beer, Charles (York North L) for Mr. Tatham

Black, Kenneth H. (Muskoka-Georgian Bay L) for Mr. McGuinty

Wildman, Bud (Algoma NDP) for Mr. R. F. Johnston

Clerk: Carrozza, Franco

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, May 24, 1988

The committee met at 3:34 p.m. in room 151.

ORGANIZATION

Mr. Chairman: This is the standing committee on social development. This meeting, as I understand it, lady and gentlemen, is an organizational meeting. I have down here a brief discussion of travel arrangements, a discussion of the schedule for Ottawa and the hearings in Ottawa, some talk about the Toronto hearings, which will be next week, and then some thoughts about the clause-by-clause treatment of the bill.

If we could begin with the travel, are most people clear how they are travelling and have they made changes to the standard travel arrangements if they need them? OK.

As far as the Ottawa schedule is concerned, I think most people have this sheet before them. You can see that the time slots, half an hour for each delegation, are full except for three. There is some time in the evenings. Our advertising in both French and English went out on time. I need some advice from you on what we do with anyone else who comes forward, if someone else appears, for example, tomorrow. Do we simply try to say there are these three slots available and treat it like that?

Mr. Jackson: No. What I would suggest and what we have done in the past is to call some of the deputants, the 5:30 deputants and the five o'clock deputant, to see if they would move forward because, invariably, with that 5:30 one we might not finish until—

Clerk of the Committee: Six.

Mr. Jackson: No; even later. There is a presumption that we will run late because that is a very compact, high-profile afternoon. Perhaps we could possibly suggest that they fill those slots.

Mr. Chairman: If that is agreeable, we will certainly do it. What about my question about new delegations? If someone appears tomorrow, we slot them in until we are full, or do you want to proceed and slot people into the evenings?

Mr. Campbell: Just to get a sense of the organization of this thing, I think perhaps the clerk could ascertain at the start of each session, or even when he gets there tomorrow morning, what is open and what we can hear. There should be some holes in the schedule in case people and the questions are running a little long. It is fair to say it is a half an hour, but it is not fair to say to somebody, if there is extensive questioning after that, to limit it, because we are there to listen and, at the same time, to try to focus in, as we did with the bill last week.

I think it is fair to see and make the decision at that time, so that we make sure that if there are two or three others who wish to speak, we can slot them in at some point. It seems that Wednesday is fairly full, as I see it now. Oh, sorry. I have Wednesday in front of me.

Clerk of the Committee: There are two sections.

Mr. Campbell: Perhaps at that point, whatever time there is, we should try and get all of the slots filled, so that they can speak and not just leave the empty spots in order to leave empty spots. I think we have to look at it when we are there, physically on the spot, and say we will make a decision and see where we can work them in, because that is why we are in Ottawa-Carleton.

Mr. Wildman: I realize I am not a regular member of the committee and I will not be with you on your trip, but having been on a number of these kinds of trips before, I think you are being pretty optimistic if you think you can cover each of these people in half an hour. If they make, say, a 10-minute presentation and then you have questions, you are going to be running over, almost inevitably, towards the end of the day. If you are looking at slotting more people in, you are going to have a rather late evening.

Mr. Chairman: We do, of course, have the evenings. There was discussion of how long we should be there, and we hoped it was possible to do it in a day, but in fact, two days appear to be the limit.

Clerk of the Committee: To answer the question about the timing, those are the time slots that the groups have requested themselves. Also, the question was, "How much time do you require?" Half an hour was also what they asked for, based on what the committee decision was. So they feel comfortable within that time. I shall certainly call those groups on Wednesday afternoon to see if they would be willing to move up, but I am quite sure those are the times they requested.

Mr. Chairman: You understand there is another problem.

Mr. Wildman: That may be the time they anticipate they need, but the members of the committee may ask a lot of questions which will lengthen it.

Mr. Beer: Just two points. I would agree completely that we should try to move those two groups up to the earlier slots. On an issue like this, it seems to me that by the end of the morning and by the end of the afternoon the questioning, invariably, will probably be running late, even with the best intentions of the chair. It might be possible to slot in one or maybe two at the end of that Wednesday, but I suspect we would find this would take us through to five, if not beyond. The Thursday, as it stands, is going to be pretty full.

The question then really is the Wednesday evening, whether there is a need for meeting then. I do not know what the sense of people would be. Can one identify other groups that are likely to come forward? Perhaps Mrs. O'Neill may help.

1540

Mrs. O'Neill: I want to mention two or three things. First of all, I have done presenting at these things, but I have not been on the receiving end. Is the rule of order that we ask questions of information and they do not ask questions of us? Is that correct?

Mr. Chairman: That is correct.

Mrs. O'Neill: I personally am going to have quite a bit of difficulty with the evening in that I am speaking at a convention there tomorrow night at seven, and the next night I have taken something at 7:30. I guess I could come back after I give the speech, if you decide to work into tomorrow night.

I would draw to your attention to the fact, and I presume this happens all the time, that as I look at this there are five groups, for instance, representing from one board. I want to highlight that for the members; they will see that one board is presenting from five different perspectives. I think we will have to weigh that very much when we are hearing the speeches and questioning. I can see two back to back here that are going to give us entirely different presentations from the same board.

Mr. Beer: When you look at the list, are there some obvious other groups that you do not see there that we should perhaps be anticipating are likely to come forward?

Mrs. O'Neill: There are several individual trustees I did not expect. There is also a group here that I cannot understand: Public Education Committee of the First Unitarian Congregation of Ottawa. They have some interest that I am not familiar with. There may be other individuals or groups like that. The teachers are here and the parents are generally here. The French-speaking parents are not here too heavily, which surprises me, because they have been quite active, particularly in Carleton.

Mr. Chairman: I raised the question so that you would see what the schedule is like. We fitted the delegations in as well as we could to the two days. It is going to be a very heavy two days. There was concern about the time we could spare away from the Legislature. We already are travelling under special permission of the Legislature. I think that if and when either the clerk or myself receive these other requests, we will handle them and fit them in as well as we can.

Mrs. LeBourdais: I just wanted to confirm that this would be the one and only opportunity, so if there was a flood of other delegations that are not scheduled, unfortunately they would not be heard.

Mr. Chairman: The other option is, and I will get to it, are the hearings here in Toronto next week. I will come to that.

Mrs. LeBourdais: Thank you.

Mr. Chairman: Might I suggest that we meet at, let us say, 7:45 for breakfast, if that is suitable for people? I am open to another time—7:30?

Mr. Jackson: Unless you make it at the coffee shop at the airport, I will not be able to make it. I will be flying in at that hour. Why did you want to do that?

Mr. Chairman: In order that we could get together before we go into the public meeting. By the way, it is purely informal. Let me put it this way. I will be having breakfast at eight o'clock.

Mr. Jackson: Will this be with your running shoes?

Mr. Chairman: With my running shoes. Could we say then eight o'clock?

Mrs. O'Neill: What are you talking about? What restaurant in the Skyline in Ottawa?

Mr. Chairman: Do you know the Skyline? You tell us.

Mrs. O'Neill: They have done a lot of renovations. I do not go there very often.

Mr. Chairman: I will leave a note at the desk as to which restaurant I will be in—at eight o'clock, if that is OK with you—because I think it might be useful for us to get together at that point.

With regard to the hearings here in Toronto, the clerk has set up delegations for next Monday, which is May 30, and Tuesday, May 31. The hearings will be here Monday and Tuesday. At the moment, we have nothing on the Thursday, but it seems to me we should keep the Thursday in reserve. You will recall that our advertising mentions a cutoff of the last day of this month, so that we may still have people contact us and want to come. The present plan is Monday and Tuesday hearings here in Toronto. That is the other thing that we could mention to groups. Very often, as I see it, these are the provincial organs of the groups that we will be seeing in Ottawa, plus, as Mr. Campbell would know, a group from Sudbury. Is that reasonable?

Then there is the question of clause-by-clause consideration. If we go through that scenario with the Thursday being a slack day, in order to pick up anything that has happened, I would see us on Monday, June 6, and Tuesday, June 7, going through the bill clause by clause. Is that reasonable? That would be a week from Monday and a week from Tuesday.

Mr. Jackson: OK.

Mr. Chairman: Is that reasonable? If necessary, we would go to the Thursday that week.

With regard to clause-by-clause, could I ask members of all parties again for amendments to be be available. If it is necessary in French, the legislative counsel will do the translation free of charge. If the amendments could be presented beforehand, I for one would be most grateful. I understand they often cannot.

Mrs. O'Neill: I just wanted to mention that Mr. Ward will be coming up to Ottawa to be with us for part of Thursday of this week, so that should be helpful.

Mr. Chairman: Excellent.

Mrs. O'Neill: Is clause-by-clause written in stone for June 6 and 7? Are you suggesting June 6, 7 and 9?

Mr. Chairman: Yes. I am here painting a scenario for the committee to respond to.

Mrs. O'Neill: Because there is a bit of urgency on this?

Mr. Chairman: Yes.

Mrs. O'Neill: OK. I guess I will have to change my schedule then.
Thank you.

Mr. Chairman: Again, accepting that this is a tentative plan, does that sound reasonable to members of the committee?

Mr. Beer: Technically, it sounds reasonable.

Mr. Chairman: I heard today that we are one of the two committees which might receive Bill 107. If that is the case, if we have finished clause-by-clause on June 7—it is likely we will not have done so, but if we have—what I would see is starting Bill 107 on June 9. If not, we would be starting it on the June 13, which is the following Monday. I mention it to you because it is something I have heard of. Is that OK?

Mr. Wildman: It will probably be going either to this committee or to the standing committee on administration of justice.

Mr. Chairman: That is correct. Are there any other organizational or other points?

Interjections

Mr. Chairman: I am actually driving down because I have a wedding in the family and I have to get back to Peterborough directly from Ottawa, so it is easy for me to do so. But I will be there tonight, hopefully not too late. OK. Thank you all.

The committee adjourned at 3:50 p.m.

CARLTON
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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON

WEDNESDAY, MAY 25, 1988

Morning Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitutions:

Beer, Charles (York North L) for Mr. Tatham

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr. Cousens

Clerk: Carrozza, Franco

Witnesses/Témoins:

Du Conseil de l'enseignement en langue française, Conseil des écoles catholiques romaines de Carleton:

Ladouceur, Jocelyne, présidente, CELF

Pilon, Robert, surintendant de l'éducation

Lanthier, Jacques, surintendant de la supervision

Landriault, Rodrigue, vice-président, CELF

From the Majority Language Group, Ottawa Roman Catholic Separate School Board:

Kehoe, Bonnie, Chairman

Power, Denis J. R., Legal Counsel; with Nelligan/Power

Du Conseil de l'enseignement en langue française, Conseil des écoles séparées catholiques d'Ottawa:

Gervais, Carmen, présidente, CELF

Bastarache, Michel, avocat

From the First Unitarian Congregation of Ottawa:

McDiarmid, Don, Chairman, Public Education Committee

Haythorne, George, Past President

De l'Association canadienne-française de l'Ontario:

Gilbert, Fernand, directeur général

Gilbert, Anne, coordonnatrice de la recherche

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, May 25, 1988

The committee met at 9:32 a.m. in the ballroom of the Skyline Ottawa.

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
(continued)

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON
(suite)

Consideration of Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Etude du projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

Mr. Chairman: Ladies and gentlemen, my name is Peter Adams. I am the chairman of the standing committee on social development. We are here today to conduct hearings on Bill 109.

I have a few of things before we begin. The English channel on the receivers is channel 7 and the French channel is channel 8.

The second thing I would like to say is that I would like to apologize for this setup. It is a rather inhibiting setup we have here, but it is the hotel's interpretation of the way hearings should be conducted. I hope you will not feel inhibited by it as much as we feel inhibited by it.

The third thing I would like to say is that I think the people who are presenting here today and tomorrow—I know there are some people here who will be presenting tomorrow too—know that we have a very tight schedule. We apologize for having to limit the time for various groups, but I think you do understand that if we do start going over early in the day, it simply affects the people who will be presenting later in the day, and we have very full hearings for these two days. I hope all groups realize that they have half an hour. That includes questions. I will do all I can to keep us to those time periods.

The first group is the French-language education council of the Carleton Roman Catholic Separate School Board. I would be grateful if, for the benefit of Hansard, you would all state your names clearly before you begin.

CONSEIL DE L'ENSEIGNEMENT EN LANGUE FRANÇAISE
CONSEIL DES ÉCOLES CATHOLIQUES ROMAINES DE CARLETON

Ms. Ladouceur: Thank you, Mr. Chairman. My name is Jocelyne Ladouceur. I am president of the French-language education council for the Carleton Roman Catholic Separate School Board. On my immediate left is Rodrigue Landriault, who is vice-president. On my right is our superintendent of education, Robert Pilon. On my extreme right is Jacques Lanthier, who is the superintendent of supervision for the FLEC.

I will be reading my presentation in French, but I will be pleased to answer any questions, if time allows, in either language. I also will be leaving the text sometimes to add or change a few things.

Le conseil de l'enseignement en langue française du Conseil des écoles catholiques romaines de Carleton remercie le Comité permanent des affaires sociales de lui avoir donné l'occasion de présenter un mémoire pour énoncer sa réaction au projet de loi 109. Cette mesure législative, adoptée en première lecture le 11 avril 1988, porte création d'un conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

Le CELF appuie la position qui sera présentée au nom du Comité de planification de l'enseignement en langue française dans Ottawa-Carleton et tient à souligner que la position qu'il présente aujourd'hui vient s'ajouter à celle du comité. Loin de chercher à analyser en détail toutes les dispositions du projet de loi 109, le conseil de l'enseignement en langue française désire, dans le présent mémoire, analyser la mesure législative proposée en fonction des aspects qu'il juge les plus importants, à savoir: la constitutionnalité, le financement, la répartition des conseillers scolaires, le transfert des biens, le mécanisme de règlement des conflits, les compétences exigées du directeur général et la mutation d'employés.

Le CELF sera heureux de répondre à vos questions ou de commenter certains aspects du mémoire dont il aurait pu traiter trop sommairement, et souhaite au Comité permanent des affaires sociales tout le succès voulu dans l'exécution de l'important mandat qui lui a été confié.

Le conseil de l'enseignement en langue française du Conseil des écoles catholiques romaines de Carleton se compose de sept conseillers élus représentant des contribuables répartis sur une superficie géographique d'environ 1100 milles carrés. Le CELF a compétence sur 19 écoles élémentaires de langue française, lesquelles regroupent quelque 6500 élèves et englobent environ 345 enseignants.

En outre, le territoire desservi par le CELF du CECRC comporte à la fois des secteurs ruraux et des secteurs urbains. Enfin, la population francophone du territoire est répartie de façon irrégulière, la plus grande concentration se situant à l'est dans les municipalités de Cumberland et de Gloucester.

Il est important de noter au départ que le CELF appuie l'objectif global visé par le projet de loi 109. Il voit dans cette mesure législative un geste historique par lequel les francophones d'Ottawa-Carleton seront habilités à gérer leurs institutions scolaires de façon autonome. Pour les francophones d'Ottawa-Carleton, il s'agit de l'aboutissement d'une lutte de plus de 20 ans. C'est pourquoi le CELF s'en réjouit.

Les commentaires et les amendements que nous formulons dans les pages qui suivent ne cherchent donc qu'à améliorer le projet de loi et à en supprimer les ambiguïtés. Le lecteur ne devrait aucunement y voir une attitude négative de la part du CELF face à la mesure proposée.

0940

Le CELF souhaite que la constitutionnalité du conseil proposé ne puisse en aucun cas être contestée. De manière à sauvegarder tous les droits religieux garantis par l'article 93 de la Loi constitutionnelle et par l'article 29 de la Charte canadienne des droits et libertés, le CELF suggère d'inclure dans le projet de loi un article analogue à l'article 29 de la

Charte, lequel préciserait qu'aucune des dispositions du projet de loi ne restreindra de quelque façon que ce soit les droits déjà conférés.

Compétences du conseil plénier et des sections: Cette partie traite des questions qui ressortissent à la compétence exclusive des sections et de celles qui sont de compétence commune. Le conseil de l'enseignement en langue française appuie le principe visant à accorder aux sections une compétence exclusive dans certains domaines dans la mesure où les compétences ainsi données sont limitées à celles qui s'imposent pour assurer le respect des droits religieux conférés par la Loi constitutionnelle et la Charte canadienne des droits et libertés.

Sur le plan terminologique, le CELF présente les observations suivantes aux membres du comité permanent.

A la disposition 4(1)11, il faudrait parler du renvoi des enseignants ou de la révocation de leur contrat.

A la disposition 4(1)15, il faudrait plutôt parler de comités consultatifs.

A la disposition 4(1)22, l'approvisionnement en matériel pédagogique et d'apprentissage est une question de compétence exclusive qui devrait toutefois pouvoir être mise en commun. Le choix du terme <approvisionnement> laisse à désirer.

La disposition 4(1)23, qui prévoit l'exploitation de cafétérias à l'usage des employés et des élèves, devrait être supprimée.

A la disposition 4(1)26, le terme <allocations versées aux membres> devrait être remplacé par <honoraires des conseillers>.

A la disposition 4(3)10, il faudrait plutôt parler des honoraires versés au président.

Enfin, aux dispositions 4(3)11 et 4(3)12, il faudrait préciser qu'il s'agit des employés du conseil plénier ou de ceux des sections.

M. Campbell: Excusez, Monsieur le Président. Apparently, translation is having difficulty. Could you slow down the text or have a copy given to translation? I think, perhaps, if we could—

Ms. Ladouceur: I will try to slow down, but I am mindful of the chairman's—

Mr. Chairman: We have provided them with a copy. That will be fine.

Ms. Ladouceur: OK. I will try.

Le CELF propose donc que la partie II du projet de loi 109 soit modifiée en fonction des observations formulées ci-dessus.

Partie IV, le soutien scolaire, les alinéas 13(2)a) et 13(2)b) et les paragraphes 17(2) et 18(1): Ces dispositions ont pour effet de traiter les francophones comme groupe de second ordre. La loi actuelle accorde la préférence au système public lorsqu'il n'y a pas unanimité sur la désignation des taxes au système public ou au système séparé, ou lorsqu'il n'y a pas de désignation. De la même façon, le projet de loi 109 accorde la préférence au

système anglophone lorsqu'il n'y a pas unanimité ou désignation sur le plan linguistique.

Le CELF trouve inacceptable que le législateur suppose qu'à moins d'avis contraire, les citoyens sont tous des anglophones contribuables des écoles publiques. Il faut que la loi actuelle ainsi que le projet de loi soient amendés pour remédier à la situation. Le CELF est également d'avis que les fonds non désignés devraient être répartis parmi les divers groupes de façon équitable.

Partie V, les électeurs du conseil de langue française: Pour fins de précision, le CELF propose que l'article 21 soit reformulé en ces termes, et l'ajout est souligné dans le texte de notre mémoire: <Dans une élection ordinaire qui se déroule dans une municipalité de secteur, nul n'a le droit de voter à la fois pour les membres d'une section et pour les membres d'une autre section ou d'un autre conseil aux termes de la Loi sur l'éducation.>

Partie VIII, composition du conseil: En 1984, la Cour d'appel de l'Ontario a rendu une décision historique qui a ouvert la porte à la pleine gestion scolaire pour la minorité linguistique en Ontario. Le 12 juillet 1986, le gouvernement de l'Ontario adoptait le projet de loi 75, qui venait concrétiser de façon législative cette décision. Selon la Loi 75, il incombait aux membres du CELF de juger de l'opportunité du système de quartiers électoraux pour répondre aux besoins de la communauté de langue minoritaire.

Or, tout comme les dispositions des projets de loi 76 puis 125, la partie VIII du projet de loi 109 vient nier et, de plus, retirer aux francophones de la région d'Ottawa-Carleton ce droit qui leur avait été accordé lors de l'adoption de la Loi 75, droit qu'ils n'ont d'ailleurs jamais eu l'occasion d'exercer.

Il semble évident que pour respecter la Charte canadienne des droits et libertés, toute loi adoptée doit prévoir que la répartition des conseillers scolaires à l'intérieur du conseil scolaire de langue française doit correspondre à la répartition et aux besoins de la communauté francophone à l'intérieur des limites du conseil.

Le CELF recommande donc que les dispositions visant la division du territoire et la répartition des conseillers scolaires soient supprimées et remplacées par des dispositions qui seraient conformes à l'esprit de la Loi 75 et de la décision de 1984 de la Cour d'appel de l'Ontario.

Dans cette même partie, les paragraphes 36(3) et 36(7) sont extrêmement mal formulés. Il faudrait plutôt lire, et nous soulignons dans notre mémoire, encore une fois, la modification proposée: <...dans les 20 jours qui suivent la plus rapprochée des deux échéances suivantes>: a) cinq jours après, et ensuite, b) le 5 août.

Partie IX, les finances: Le conseil scolaire de langue française doit disposer d'une assiette d'imposition financière qui lui permettra d'offrir des chances égales en matière d'éducation. Le CELF déplore les imprécisions qui subsistent sur le plan du financement du nouveau conseil scolaire de langue française. Il estime que le produit de l'imposition industrielle et commerciale doit être mis en commun et réparti parmi les conseils au prorata des élèves. Il faut également que la taxe résidentielle et celle des petites entreprises commerciales puissent être disponibles au nouveau conseil scolaire de langue française afin qu'il n'y ait aucun écart en ce qui concerne la qualité des services offerts aux élèves francophones et aux élèves anglophones de la région.

Il serait inacceptable qu'il existe des inégalités entre les sections au sein du conseil scolaire de langue française. De la même façon, il faudra que le nouveau conseil ne soit pas défavorisé face aux quatre autres conseils de la région. Le mode de financement adopté devra veiller à éviter les injustices.

Le CELF est conscient que le gouvernement se penche, à l'heure actuelle, sur toute la question du financement de l'éducation dans la province, dans le but d'y apporter des révisions. S'il est impossible, à cause de cette révision, de mettre en commun les taxes industrielles et commerciales au moment de l'adoption du projet de loi, il faudra que le gouvernement assure un financement provisoire garantissant les sommes auxquelles la mise en commun donnerait droit. Les divers aspects de la formule de financement devront être connus à fond avant que le projet de loi ne soit adopté.

Enfin, le CELF souhaite que chaque secteur du nouveau conseil scolaire de langue française puisse toucher la même somme par élève que le conseil qui, à l'heure actuelle, est le mieux nanti des quatre conseils de la région à cet égard.

Le CELF propose que le paragraphe 48(3) soit reformulé en ces termes: <Le lieutenant-gouverneur en conseil doit prévoir le paiement à la section publique ou à la section catholique, ou aux deux, des subventions spéciales>, et ici on retire une section, <qu'il juge opportunes, et ce, jusqu'à ce que la réforme du mode de financement des conseils scolaires ait été effectuée.>

De plus, le CELF croit fermement que le financement des deux sections doit être assuré de manière qu'il n'existe aucune disparité entre elles. D'ailleurs, le CELF s'interroge sérieusement sur la constitutionnalité d'un conseil où il y aurait disparité entre les secteurs.

Le CELF propose l'ajout d'un paragraphe 48(5), qui serait formulé de manière à prévoir des subventions de démarrage pour assurer le même niveau de service qui existe, à l'heure actuelle, dans les quatre conseils, sans pour autant appauvrir ces conseils. Ces fonds de départ devront permettre, entre autres, l'implantation d'un siège social et la satisfaction de tous les besoins rattachés à son exploitation.

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Partie X: Le CELF appuie l'article 52 du projet de loi. Il croit approprié que le directeur général du conseil scolaire de langue française d'Ottawa-Carleton puisse être un agent de supervision qui ne possède pas nécessairement les qualités requises pour être enseignant.

Cette distinction conférerait aux membres du conseil scolaire de langue française plus de latitude lorsque viendra le moment de choisir le directeur général du nouveau conseil. Cette opinion est fondée sur le fait que le directeur général du nouveau conseil devra, pour bien s'acquitter de ses fonctions, faire preuve de beaucoup de tact, de discernement et d'expertise en administration. Les tâches pédagogiques, pour leur part, seront essentiellement confiées aux directeurs d'éducation de chaque section.

Partie XI, la résolution des conflits: Le CELF voudrait que les délais soient resserrés et qu'une échéance soit fixée là où des périodes indéterminées ont été prévues. Il faudrait établir une distinction entre le mécanisme de résolution des conflits qui vise les composantes du nouveau conseil et celui qui s'adresse au nouveau conseil et à l'un ou l'autre des quatre conseils anglophones existants.

Partie XII, transfert de bâtiments et de biens: Le projet de loi indique, au paragraphe 62(3), que les biens autres que ceux qui seront transférés aux termes de l'article 61 seront transférés selon les besoins du conseil de langue française. En plus, selon le paragraphe 62(2), ce transfert devra «constituer une contribution équitable». Si les francophones possèdent des biens et des réserves au sein d'un conseil et si ces derniers sont supérieurs à ce dont ils ont strictement besoin, ils devraient néanmoins pouvoir transférer le tout.

Partie XIII, la mutation des employés: Le CELF croit que le délai de trois ans prévu au paragraphe 66(5) devrait être abrégé, car il s'inquiète de la grande latitude qui semble être accordée aux employés désignés.

En conclusion, Monsieur le Président et chers membres du Comité, les membres du CELF vous remercie de votre bienveillante attention et sont assurés que les membres du Comité permanent des affaires sociales déploieront tous les efforts voulus afin que la mesure législative créant le conseil scolaire de langue française d'Ottawa-Carleton puisse être adoptée dans les plus brefs délais et répondre aux aspirations des francophones de la région.

Alors, je suis prête à répondre à vos questions. I would be pleased to answer any questions, and my colleagues also.

M. le Président: Je vous remercie, Madame Ladouceur. Est-ce qu'il y a des questions?

Mr. McGuinty: Not a question, an observation. I think that the brief lost something in the translation. I do not say that as critical of the translator. It is physically impossible to translate at that rate of delivery, so if the translator could possibly be provided with a text in advance of any other presentations in French, I think it would be helpful for everyone.

Mr. Chairman: By all means. Any other points or questions?

M. Beer: Merci. Moi aussi, je voudrais vous remercier pour votre présentation ce matin. Comme vous l'avez souligné, ça fait au moins une vingtaine d'années qu'on travaille sur la question du développement d'un conseil scolaire francophone dans cette région.

Je veux bien comprendre, peut-être, un point global. Comme vous le savez, nous commençons, dans ce projet de loi, quelque chose de nouveau et, comme dans le cas de la législation Bériault de la fin des années 60, on savait fort bien au commencement que, probablement après deux ou trois ans, il faudrait faire des changements après coup, après qu'on aurait vu le fonctionnement de la législation. Alors, du point de vue global, avec les changements que vous avez proposés, vous acceptez globalement la loi telle que proposée, mais vous préféreriez faire adopter ces changements pour améliorer le projet de loi comme tel.

Est-ce qu'il y a là-dedans deux ou trois amendements que vous voudriez souligner comme étant les plus importants pour vous? Je ne sais pas si ma question est claire, mais je pense qu'il faut peut-être que nous, les membres du Comité, essayions de voir ce qui est absolument essentiel, à votre avis, et ce qui est souhaitable mais pas nécessairement essentiel.

Mme Ladouceur: Si vous me demandez quels sont les points que je trouve les plus susceptibles de poser des problèmes, je pense que ce seraient probablement la question du financement et puis la question de la

constitutionnalité du projet de loi. Je pense que si ces deux questions sont réglées, 90 pour cent des problèmes vont aussi être réglés. Mais, comme vous l'avez mentionné, le CELF du Conseil des écoles séparées de Carleton appuie le projet de loi.

M. Beer: Bon, merci.

M. Villeneuve: Merci bien de votre présentation. A la page dix, à peu près au milieu de la page, vous mentionnez le projet de loi 76. Etes-vous au courant du fait que le projet de loi 76 est maintenant retiré et remplacé par le projet de loi 125?

Quelque chose qui m'inquiète ici avec le projet de loi 125 est, comme vous le mentionnez, la situation que la gestion scolaire prévue dans le projet de loi 75 semble être défaite un peu par la façon dont le projet de loi 125 est présenté. Maintenant, d'après vous, est-ce que le projet de loi 125, réellement, défait totalement le projet de loi 75? Certaines situations pourraient se produire où le projet de loi 75 nous donnerait nos nombres minimums. Par contre, tout dépend de la façon dont le recensement se fait.

Mme Ladouceur: Je pense que vous avez touché un des points essentiels. Toute la question de l'énumération, puis de l'inconnu rattaché à l'énumération et au résultat de l'énumération, préoccupe énormément la population francophone.

Pour ce qui est du nombre garanti, c'est trois dans les deux cas; alors, ça ne change pas grand-chose. Cela peut changer les nombres au-delà du nombre garanti, par contre; ça peut créer un déséquilibre à ce niveau-là. Et puis il est clair que le projet de loi 125 maintenant, qui était le projet de loi 76 auparavant, retire beaucoup de latitude qui a été accordée au CELF en vertu du projet de loi 75. Alors, c'est pour cela qu'on a mentionné que, en fait, le projet de loi 125 retire un droit que l'on n'a même pas encore eu l'occasion d'exercer une fois, puisque les élections sont en novembre.

M. Villeneuve: Alors, je crois qu'il devient la tâche du Comité, ici présent aujourd'hui, de faire face à cette situation-là et de corriger soit l'un ou l'autre projet de loi, non seulement pour garantir les minimums d'après le projet de loi 75 mais pour que la représentation du côté francophone soit équitable.

Mme Ladouceur: Certainement.

M. Villeneuve: Merci.

Mrs. O'Neill: As you know, I have already met with you before and I am quite familiar with several areas of the brief. I found it interesting. If you would go to page 7, I wonder why you picked on these three areas for amendment. I wonder if you could very briefly tell me. Then also the same comment on folio 16: I just wondered why you highlighted those as amendments. They had not come up in our discussions before.

Ms. Ladouceur: You are referring to paragraphs 4(1)26, 4(1)23—

Mrs. O'Neill: Yes, that stuff. Why are those significant amendments?

Ms. Ladouceur: They are not really significant in the same light as others would be considered to be.

Mrs. O'Neill: I know that, I realize that.

Ms. Ladouceur: It is a question of language. In the case of paragraphs 4(1)26 and 4(3)10, properly it should be translated "honoraire," not "allocation."

Mrs. O'Neill: OK, so it is a language thing.

Ms. Ladouceur: With respect to paragraph 4(1)23, we just found it very bizarre that cafeterias should be exclusive and not even have a possibility of doing them in common. It just struck us as being a very strange provision.

Mrs. O'Neill: OK.

Ms. Ladouceur: Let's see, what does the other one say? On the last ones, paragraphs 4(3)11 and 4(3)12, it was not clear, to our mind anyway, whether we were referring to the employees of the full board or those of either section. We just thought it should be made clear.

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Mrs. O'Neill: OK, and then what about—

Ms. Ladouceur: And then on page 16?

Mrs. O'Neill: Yes, the three-year business.

Ms. Ladouceur: At subsection 10, we just thought it was excessive. It was granting excessive latitude, we felt.

Mrs. O'Neill: Oh, OK.

Ms. Ladouceur: One would think that having made up your mind and then having changed your mind once, that would be sufficient. You should not have the opportunity to change your mind indefinitely.

Mrs. O'Neill: In other words, you are requesting more stability.

Ms. Ladouceur: Yes. That is probably a much more elegant way of saying it than I did.

Mrs. O'Neill: OK. Thank you very much.

M. Allen: Merci. C'est un plaisir d'être à Ottawa encore une fois pour parler avec nos concitoyens francophones de la région concernant un projet de loi aussi historique, visant à établir un conseil scolaire francophone pour cette région. J'ai toujours dit que Mme Ladouceur parlait trop vite; c'est toujours un problème dans nos conversations. Mais je veux souligner que c'est également un problème lorsque les anglophones parlent trop vite pour les interprètes.

Je n'ai de problème avec aucune partie de votre mémoire. Je vois, comme vous, qu'il est possible de commencer ce projet sans problèmes constitutionnels et de protéger les droits des deux secteurs du conseil bipolaire.

Mais j'ai une question à la page quinze, au paragraphe 8, sur la résolution des conflits. Pouvez-vous me préciser ce que vous pensez du problème de la distinction des deux mécanismes de résolution des conflits, celui à l'intérieur du conseil scolaire et celui qui intervient dans ses relations avec les autres conseils scolaires de la région?

Mme Ladouceur: Bien. Nous croyons tout simplement que le mécanisme de résolution des conflits ne devrait pas nécessairement être le même dans les deux cas. Le genre de conflit risque fort d'être différent, et puis nous sommes d'avis qu'il vaudrait sans doute mieux faire la distinction pour que ce soit très clair. Les échéanciers pourraient varier aussi dans le cas d'un conflit interne et dans le cas d'un conflit qui mettrait en jeu un autre conseil avec le conseil de langue française.

M. Allen: Est-ce que la distinction entre les deux est assez claire pour vous dans le projet de loi en ce moment?

Mme Ladouceur: Non; c'est pour cela que nous l'avons mentionné.

M. Allen: Deuxièmement, à l'égard des finances et des impôts commerciaux et industriels, vous attendez-vous que le gouvernement commence une démarche vers des impôts communs pour la région, à l'avenir?

Mme Ladouceur: Bien. Nous souhaiterions que le gouvernement le fasse. Par contre, nous sommes conscients que le gouvernement se penche encore sur la question du rapport Macdonald et sur la révision de tout le mode de financement du système d'éducation. Alors, c'est pourquoi nous avons mentionné que, compte tenu de ces activités du gouvernement, nous comprenons qu'il soit nécessaire, probablement, de fournir un financement intérimaire ou provisoire.

Ce que nous souhaitons, c'est que, premièrement, ce financement-là soit équitable, qu'il reflète ce à quoi nous aurions accès si nous avions déjà la révision du mode de financement, et puis qu'il se poursuive au même niveau jusqu'à ce que la révision du financement soit en place; puisque ce qui nous est essentiel, c'est que le conseil ne soit pas puni par rapport aux autres conseils, qu'il puisse continuer à offrir les mêmes services qui sont offerts en ce moment et qu'il n'y ait pas de disparités à l'intérieur du conseil.

M. Allen: Merci beaucoup.

M. le Président: Madame Ladouceur, je vous remercie, vous et vos collègues. Je crois que, pour la plupart, les questions étaient plus longues que les réponses.

Mme Ladouceur: Merci beaucoup.

Mr. Chairman: The second group this morning is the Ottawa Roman Catholic Separate School Board and the majority language group, if they would come forward, please.

I would say in the meanwhile to the members of the committee that, as we are in this configuration, as I am trying to concentrate on the speakers, I do not in fact see your signal, so I would be grateful if you could indicate to the clerk or pass along when in fact you want to be put on the list.

Mr. Campbell: I might suggest, because of the configuration, that we just jump in. Perhaps if the groups understand that is the case, as with the translation previously, in that situation I jumped in because I felt it was apropos.

Mr. Chairman: I am glad of that. This is just on the question of order, though, and I would like to be fair.

Mr. Campbell: Yes, I appreciate that.

Mr. Chairman: Do you have a written brief, might I ask?

Interjection: It is just behind you.

Mr. Chairman: Again, if I could ask that you both say your names clearly in order that Hansard knows exactly who you are, please.

OTTAWA ROMAN CATHOLIC SEPARATE SCHOOL BOARD

Mrs. Kehoe: Thank you, Mr. Chairman. I am Bonnie Kehoe, chairperson of the majority language group of the Ottawa Roman Catholic Separate School Board. With me is Denis Power, our legal counsel for the majority language group.

We appreciate this opportunity to express our views to the committee and I ask for your very careful consideration of the contents of the brief you have before you.

This brief has been very carefully thought out and prepared within the short time frame allotted to us, and it reflects the very grave concerns about the problems we face with the establishment of a French-language school board in Ottawa-Carleton. It is not my intention to read the brief in its entirety. I would simply like to highlight some of our more serious concerns and refer the committee to those sections which detail those concerns.

On page 3 of the brief you have the names of the other members of the majority language group. The majority language group arose out of the Education Amendment Act, Bill 75. Unfortunately, Bill 75 at the Ottawa separate school board resulted in disruptions to the workings of our board, a fact which, the majority language group—which I will refer to as the MLG—submits, has not received due attention in Bill 109.

That same year, 1986, Ontario enacted another amendment known as Bill 30. Under Bill 30, neither the MLG nor our French-language education council have been able to conclude agreements with the Ottawa Board of Education with respect to facilities required for the extension of Catholic education. The uncertainty caused by this will cause serious difficulties in determining what is equitable in the sharing of assets and personnel between the four English boards and the French-language board.

On page 4 you have relevant enrolment statistics of the Ottawa separate school board and the English and French schools as of September 30, 1987. I would just like to draw your attention to the fact that the nonresident students are included in these statistics. I would particularly like you to note that 418 of the 848 students at Samuel Genest Secondary School are nonresident students.

So I shall just give you, at the bottom; the total junior kindergarten to grade 12 percentages, which would give, in the French sector, 34.2 per cent of our enrolment. In the English sector we have 65.8 per cent of the enrolment. On page 5 you have a breakdown of the 28 schools within the English sector and the 21 schools in the French sector.

On the bottom of page 6 I would like to point out that there are eight trustees composing the majority language group. There are also eight trustees who make up the French-language education council. In the Ottawa separate school board, because of the pupil ratio and trustee ratio, we found ourselves in a rather peculiar situation, since Bill 75 seemed to anticipate situations in which there existed large majorities and small minorities. The unfortunate consequence of the implementation of Bill 75 was that disputes arose within the board over jurisdictional matters resulting in the majority language group not being able to implement several of its own motions, because of their being objected to at meetings of the full board. As a matter of fact, 15 per cent of our motions were challenged by the full board, so it is obvious that Bill 75 has not been too successful for the majority language group of the Ottawa separate school board.

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Let me emphasize that we welcome the establishment of a French-language school board in Ottawa-Carleton, but it must not happen at the expense of the English Catholic majority. We, as elected trustees, have an obligation to ensure that we satisfactorily represent the interests of our English Catholic students as well as the ratepayers. Our rights must not be compromised.

Page 7 of our brief refers to this matter, and I especially bring to your attention the fact that the French-language board is established by blending the guarantees contained in the Constitution and the Canadian Charter of Rights and Freedoms. We point out that, while this brief is not intended to address the question of whether or not the act, either as a whole or in part, is constitutionally valid, the majority language group reserves the right to make such submissions at the appropriate time and place.

We are gravely disturbed that the bill does not make the Roman Catholic sector of the French-language board a Roman Catholic separate school board. This failure to do so we see as a threat to Catholic education across this province. In short, we believe it is possible to legislate minority-language education rights without impairing or endangering denominational education rights.

The majority language group and FLEC each serve a different segment of our community. We each have our own vested interests, and these vested interests will undoubtedly conflict. This conflict is recognized in Bill 109. However, the majority language group believes that the various formulae and dispute resolution procedures are inadequate. I am on page 8 at the present time, Mr. Chairman.

We are going to find ourselves trying to negotiate a fair deal. We are going to have to sit across the table, eyeball to eyeball. To be effective, we will be compelled to establish our own timetables, bottom lines, strategies, fallback positions, etc. Obviously, if the other side is aware of these tactics, the negotiation process is rendered rather meaningless. Each side will have to decide when to agree on matters and when not to agree and thus come under the dispute resolution procedures of the act. Once again, each side will be required to adopt strategies and will not want these revealed to the other. The bottom line is that there is a need for confidentiality. The majority language group is aware that each side will be expected to illustrate the utmost good faith. However, that duty must be looked at in the light of the obligation of each side to effect the best deal in order to preserve the intent of the legislation and denominational rights.

More than 80 per cent of our administration staff at the Ottawa separate school board is francophone and/or French-speaking. The percentage at the Carleton Roman Catholic Separate School Board is significant. However, in the other two English boards it is quite small. Currently we have 130.75 full-time equivalent positions in our centralized staff. These positions are staffed by 132 persons, and of those 132 staff members, 121 might be classified as being French speaking. That represents 87.7 per cent of our total centralized staff. A significant number of these people, roughly 80, will continue to be required by the Ottawa Roman Catholic Separate School Board. Accordingly, the employment provision of Bill 109 will most acutely affect the Ottawa Roman Catholic Separate School Board.

It must be noted that not all of our elementary schools listed are of equal quality in so far as facilities and their state of repair are concerned. Five of our English schools do not have a gymnasium.

In November 1987 we submitted our capital expenditure forecast for \$9.5 million. Approximately \$7.5 million of this money is to bring English schools up to par so that we can offer our educational programs to the fullest. Only \$1.5 million of that is required for the French schools. The English sector schools, therefore, have a very significant liability in this regard, and this must be recognized.

To date, there has been no direct Ministry of Education assistance to the majority language group in the form of either personnel or finances. The majority language group therefore perceives that our needs and the needs of the students and ratepayers we represent have not been in the forefront of the planning process that has been and is under way for the establishment of the Ottawa-Carleton French-language school board and the continuance of the four English-language boards.

If we could move now to page 12, the majority language group wishes to state in the clearest terms possible that we do not believe that we, as a majority language group, have been adequately involved in the planning process. Time will not allow me to elaborate on that, but I would be very happy to do so later.

On page 13, the proposed legislation and the concerns of the Ottawa separate school board majority language group concerning its contents, we refer to the vagueness of the bill where we talk about assets and reserves. We are saying that the transfer must be an equitable contribution. This, with respect, is extremely vague and could seriously impede the effective implementation of Bill 109.

It must be remembered that this proposed legislation is unique and with it we have unique problems, and we are looking for unique solutions to these problems, particularly within the Ottawa separate school board.

The bill refers to the requirements of the new French-language board for its establishment, maintenance and operation. No recognition appears in the legislation with respect to the impact it will have on the English boards, such as the numerous problems with reorganization of administrative services resulting from downsizing, replacing key staff who may leave, reassignment of duties, redundancy and, last but by no means least, its program. This impact must be acknowledged and satisfactorily dealt with.

The majority language group is requesting financial assistance as well as personnel assistance from the Ministry of Education in the entire process.

On April 28, 1988, the trustees of the majority language group passed a resolution authorizing the MLG to contact the Minister of Education (Mr. Ward) with a request that the Minister of Education immediately provide personnel and financial assistance to the majority language group in the implementation of this proposed legislation.

In the discussions leading to this resolution, the majority language group observed that the timetable imposed by the legislation was extremely optimistic. The trustees expressed very real concern as to whether or not that timetable could be met. In fact, we believe it could not be met.

We must have assigned to us knowledgeable senior ministry personnel to assist us in this process. The majority language group trustees contemplated having to retain legal counsel and other professionals. The trustees therefore anticipated having to incur substantial extraordinary expenses, and our hope is to attempt to reduce these by relying for assistance on ministry officials and financial resources.

The timetable proposed in the legislation appears to be overly optimistic, and it may result in a strategy on the part of one or more of the parties to bypass the negotiation stage and opt for arbitration.

The French-language education council must identify the additional assets and reserves that the new French-language board believes it will require, and this has not happened. We were told we must sit down and negotiate by May 1. This has gone by and nothing has happened.

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The negotiating process includes the necessity of meeting with all the other boards on the methods of encouraging voluntary transfers of employees to positions with the French-language board. This has not happened.

All present Ottawa separate school board real properties are being appraised, and a report is not expected until the end of June. Student enrolment and French-language board electors for September 1988 must be projected. This will be extremely difficult in light of the fact that the enumeration process is only now taking place. This work will be going on throughout the summer. We are to have completed this process largely by August 31. This is a time when both trustees and our administrative staff will be on holidays. The act provides that, on or before August 31, each presently existing board must determine which of its other assets and reserves are to be transferred to the new French-language board.

I want to say here that the Ottawa separate school board was delighted to see a double majority vote in the consultation document, where we saw it first, and we thank you very much for that.

While the transfers will not be effected until August 31, 1989, their identification must be completed within a matter of a couple of months. This deadline, it is submitted, is unreasonably short. The bill provides that regardless of what happens in this regard, either by resolution or by commission decision, if the new French-language board, on or before December 31, 1988, resolves that such assets and reserves that are to be transferred do not represent an equitable contribution or that its requirements are not adequately met, it may refer the matter to the commission. The majority language group questions the fairness and the logic of such a provision.

I would like to turn the dispute resolution portion over to Mr. Power, if I may.

Mr. Power: I am sure you understand that I cannot sit here and let my client do all the talking. I have to address at least one facet of this brief.

As Mrs. Kehoe has pointed out, there is a difficult procedural task that faces the parties in the implementation of this legislation. It is quite easy, I would submit, to foresee that there will be differences. Problems will arise that will have to be solved by some third party. The majority language group has very serious concerns with regard to the formula now in the bill with regard to dispute resolution.

Subsection 54(1) provides a formula for the resolution of disputes between the sectors of the new board, but it is restricted to the sectors of the new board. Subsection 54(2) provides that, where a matter is to be resolved by the agreement of the French-language board or one of its sectors, on the one hand, and one of the English boards, on the other hand, and where the time for such agreement has passed, then the French-language board shall require the matter to be resolved through this dispute resolution formula. Subsection 62(7) provides that if an English board does not adopt a resolution, in the time provided by subsection 62(5), dealing with other assets, the choice of the assets and the reserves to be transferred shall be referred.

The point we wish to make is that this dispute resolution formula is not available to the English boards or the majority language group. The only time it ends up before the board is where either the French-language board takes it there or the act provides that it shall automatically be resolved. If there are going to be problems, there has to be some sort of fashion to determine and solve these problems, and as it now stands, that does not exist.

The act also provides that, where a problem is submitted to arbitration or to the commission, "the parties shall be..." and it names the parties. Basically, it is the party who requested the arbitration, mediation or whatever the case might be, and the other party most directly concerned. Everything here concerns all four boards. Therefore, if there is to be any sort of arbitration or dispute resolution mechanism, it must be one that is open to the four English boards and the new French-language board. All parties must have access to the process, because each party has an interest in each and every problem. One party might very easily be faced with a determination between two other parties that would effectively become binding on it, so the process must be open to all five boards.

The act provides that the Arbitrations Act does not apply. It says as well that the decision of the board is final and binding, but it does provide a mechanism for the enforcement of that decision. Pursuant to the Labour Relations Act and the Arbitrations Act, a decision may be filed in court. It then becomes a judgement of the court and may be enforced as any judgement of the court.

You have a system here where you will have an arbitration decision which is binding on the parties, but one or other of the parties may say, "We do not like it and we are not going to live with it." If that happens, what do you do? That is a very practical problem.

We understand that amendments are proposed or are being considered for the dispute resolution formula, and we ask, please keep us involved in the process. Please give us another opportunity to look at that and make the appropriate submissions.

We have a concern with the present mandate of the Languages of Instruction Commission of Ontario. If the plan is to make it the arbitrator, then we submit as strenuously as we can that its mandate must be changed. The perception is that its role is to protect minority groups. You cannot have a commission whose role is perceived as that of a protector of minority rights deciding problems. If you are going to make the commission the arbitrator, then we urge you, please, to consider its mandate and consider very carefully the persons who will be appointed.

Finally, there exists the problem that constitutional legal matters may arise in the implementation of this legislation, and we question whether an arbitration board made up of lawyers, nonlawyers or a mixture is a proper tribunal to be deciding some of these constitutional issues which may have to be decided.

Mrs. Kehoe: Mr. Chairman, I would like to take you to page 17, the centre of the page, the role of senior board staff. This is so important to us that I am going to read this portion directly from the brief.

As previously mentioned, there will be a need for confidentiality during the negotiation and dispute resolution processes. The act is silent as to the roles to be played by directors of education and other senior personnel of the affected boards. Some of the senior officials and employees of the Ottawa Roman Catholic Separate School Board attend, as far as possible, the meetings of both the French-language education council and the MLG and would therefore be in a position to learn the strategy of both sides.

Up to now, members of the FLEC have been entitled to attend and observe MLG meetings, and of course, MLG trustee members have had similar rights. A continuation of this state of affairs is untenable and undermines the negotiation and dispute resolution processes. In fact, what each side requires is a strong supporter: that is, staff person or persons who can direct her, his or their efforts to assisting the respective sides. Up to this time, the minutes and other documents filed with the FLEC or MLG have been available to all trustees. Obviously, there must be procedures put in place in order to preserve confidentiality in so far as the deliberations of each affect their responsibilities under the proposed legislation.

The interim funding: The minister has promised special temporary grants to the new French board that will enable the sectors of the new board to offer the same quality of education that is available to the French-language students in Ottawa-Carleton. We appreciate the difficulties in trying to quantify the amount of such grants. However, the legislation calls for recognition of the requirements of the new French-language board and for an equitable distribution of assets. Therefore, the amount of these interim grants is relevant.

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The tax base: It appears that there will be an even more serious strain on corporations with a Catholic equity base to distinguish between French- and English-speaking shareholders as well as Catholic and non-Catholic shareholders. The minister has made a commitment for funding for the French-language board but not for English Catholic boards.

Determination of the employment gratuity: The bill states that the amount of the payment under this section shall be shared by the English-language and French-language boards. The majority language group believes that this termination-of-employment gratuity should be a negotiable item, particularly in view of the fact that it will be left with a huge unfunded liability with respect to the teachers who will remain with the English board, in light of the now uncertain tax base and a certain loss of tax revenue, which is a matter of great concern to the majority language group.

We also note that the average age of teachers employed at our board is older than at many other boards in the province. We have a very large unfunded liability at our board. Concerning the teachers who will be transferring, if I could give an example, if a teacher who is retiring after 30 years has spent 20 years with our board and 10 years with the new French-language board, we would be responsible fully for the 20 years that teacher has spent with our board, albeit with our tax base having been removed. I simply do not know where those funds would come from, so that is a major concern.

If I could turn now, Mr. Chairman—and you have it in a separate copy—to our recommendations, I will go through them just as quickly as I possibly can.

Action requested:

1. Amend the bill to stipulate that the authority responsible for the governance of the Roman Catholic students shall be a separate school board for all purposes of the Education Act.

2. Amend the bill to provide that not only must there be taken into account in the transfer of assets all of the French-language board's requirements for establishing, maintaining and operating a school board, but, as well, the similar requirements of the four English-language boards.

3. Amend the bill to provide for recognition of the liabilities of the existing boards in the determination of what is equitable in the transfer of assets and reserves in addition to those to be transferred under section 61.

4. Amend the bill, and in particular subsection 62(2), so as to eliminate some of its vagueness. Words such as "equitable contribution," when used in relation to millions of dollars' worth of assets, provide little or no guidance to the parties or to those who will be seized with the responsibility of resolving disputes. Some guidelines must be established.

It must be made very clear in the legislation that the obligation to transfer assets to the new board rests upon all four existing English boards and that, therefore, these financial commitments must be equitable among the boards themselves; that the Minister of Education advise the parties affected by the legislation of the amount of interim and other funding the ministry intends to direct to the new French-language board, since that information is crucial to a determination of what is equitable among the various boards; and that the Ministry of Education forthwith provide to the majority language group both financial and ministry personnel assistance in order to effectively and economically implement the proposed legislation.

5. Amend the bill so as to provide for a more meaningful timetable, one that will permit meaningful negotiations and end in a resolution that will be just and fair to all affected parties. Such a timetable, at the very minimum, must recognize the impracticality of directing those affected to negotiate

over the summer months, the very important matters of the transfer of assets and personnel.

6. Amend the bill to permit all boards, as well as majority language groups and French-language education councils, equal access to the dispute resolution mechanisms of the act in circumstances where no agreement is concluded or where differences between them cannot be resolved.

7. Amend the bill to provide that, should a matter be referred to the dispute resolutions process, all interested boards have status to appear and fully participate.

8. Assure that the mandate and staffing of whatever body will serve as the arbitrator of disputes is such as to avoid any suggestion of bias or prejudice.

9. Amend the bill to provide a method for the enforcement of the awards of the arbitration board.

10. Amend the bill to provide that, should constitutional law arise as a component of any dispute under the legislation, such be determined by the Supreme Court of Ontario and not by the arbitrator or arbitration board.

11. That the Minister of Education forthwith meet with the majority language group in order to discuss and work out reasonable arrangements to protect the confidentiality of the negotiation and arbitration processes as well as to work out the assignment of senior board staff to assist the parties in such processes.

12. That the Minister of Education provide the Ottawa Roman Catholic Separate School Board with a commitment similar to that made to the new French-language board that special temporary grants enable it to continue to offer to English Catholic students the same quality of education that has been and is now being received.

13. Amend subsection 73(3) of the bill to provide that the unfunded liabilities that exist with respect to the Ottawa separate school board employee termination payments be a negotiable item and that the liabilities be taken into consideration in determining what is equitable in the transfer of assets under section 62.

All this is respectfully submitted to you, Mr. Chairman, on this May 25, 1988, and I thank you very much.

Mr. Chairman: Thank you, Mrs. Kehoe and Mr. Power. I would point out to members of the committee that this presentation has gone somewhat over its time. It is Noble Villeneuve, Sterling Campbell, Linda LeBourdais and then Richard Allen.

Mr. Villeneuve: I will be brief. You refer to a number of problems, some of which are with Bill 75, some with Bill 109 and some with Bill 125, the new method of enumeration. With your 34.8 and 65.2 percentages it will be most interesting to see, as this new method of enumeration comes out, how close you are to what is really happening.

The unfunded liability: How long has this been a problem?

Mrs. Kehoe: I have been on the board for six years. Unfortunately, I do not have an administrative person with me. I had requested that Mr. Moore, our English superintendent of operations, be with me, but he was not able to come.

It has accumulated over a number of years, as I understand it. It is somewhere in the area of \$12 million. For us to be left with that amount for teachers who will be moving on to the new board is a major concern. I think you can understand.

Mr. Villeneuve: You have made excellent recommendations, and I believe there is a large chore for this committee.

Mr. Campbell: A couple of questions. Is your administrative staff on 10-month contracts?

Mrs. Kehoe: Our administrative staff? No.

Mr. Campbell: They are on 12-month contracts?

Mrs. Kehoe: Yes. Some of the secretarial staff may be on 10-month, but not our—

Mr. Campbell: I bring it up because you had mentioned that everybody is going away on holiday. That does not necessarily happen if there is something to do in the summertime that has to be done. They take their holidays at some other—at least, with the board I used to be on. That is just a comment—

Mrs. Kehoe: Could I just say, Mr. Sterling—

Mr. Campbell: Campbell.

Mrs. Kehoe: —that I have known our administrative staff, during the time of our consolidation, as an example, to work all summer and then not get holidays during the year, either. I believe they really need a vacation.

Mr. Campbell: I do not mean to be provocative, but there are priorities, I guess. I am just pointing that out. It is not important.

I would like to deal, though, with the unfunded liability, because there seems to be a sense that you are responsible for everybody. As I understand it, under the proposal, your unfunded liability would be apportioned between the people leaving and the people staying. Let's say it was 35 per cent of the \$12 million. That would go with the other board and you would not have that unfunded liability. That portion—

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Mr. Power: That is not necessarily the case. There is an unfunded liability, and the formula in section 73 is based on the years of employment that some of these people have.

Mr. Campbell: I appreciate that.

Mr. Power: Our teaching staff, because we have a declining enrolment, has an average age higher than that of any other board in Ontario, so we are going to be left with a huge liability.

Mr. Campbell: I think it is a debatable point and I am not intending to debate this, but what I am saying in that question is that a portion of your unfunded liability—it is not because of this bill, is what I am trying to say, that all of a sudden you have an unfunded liability. What I am saying is that a portion, whatever it is, would be moving over to the new board. You concede that at least part of the unfunded liability would move over to the board. You are concerned about whether it is 35 per cent or whatever the percentage is that moves over.

Mr. Power: The problem is that the act talks about the transfer of assets and reserves. Very little is said about liabilities, and an arbitration board might very well rule: "We have no power to deal with liabilities. Our task is to deal—" So all of these liabilities, and that is only one, have to be considered.

Mr. Campbell: Again, I do not mean to be argumentative, but other boards in this province have been through the process and they have solved the problem, so obviously there is some precedent—since lawyers deal with precedent—in dealing with these kinds of issues, and I would respectfully submit that.

My last question, and I do not intend to belabour this, but how long has this process, in your mind, been contemplated by the Ottawa area? How long has this been under discussion?

Mrs. Kehoe: You are talking about the whole planning for the French school board?

Mr. Campbell: No, the concept of some change blowing through the halls of academia, if I might be so bold.

Mrs. Kehoe: I am sorry, I do not think either of us understands your question.

Mr. Campbell: Maybe I am trying to be cute. I do not mean to be.

My understanding is that the discussion has been around the table for some 10 to 12 or 14 years that there might some day be something happening.

Mrs. Kehoe: I am really happy that you asked that question.

Mr. Campbell: I have a feeling I am not.

Mrs. Kehoe: It is our understanding that the planning for a French school board has been going on for a number of years, but I have to say quite honestly that the English sector of our board has been kept very in the dark. We never received minutes from the planning committee; we have not known what has been taking place. In fact, we even had a great deal of difficulty getting an English trustee on the impact committee.

We had some difficulty with the planning committee itself, where the chairman of the planning committee was also chairman of the impact committee and the director of the planning committee was also director of the impact committee.

On the planning committee for the French board, we had every French trustee in the area. Now, on the impact committee we had one English and one French trustee, so we had the French trustees on the impact committee impacting on the very papers that they were the authors of.

Mr. Campbell: OK, can I interrupt you there? I think you misunderstood the question.

By the mere fact that there was some discussion taking place, at whatever level, was there not a sense that somehow the planning should start, that something should start to be thought about by anybody in the community? Was there some sense that perhaps some day this might happen and we should be ready for it, "we" being the board?

Mrs. Kehoe: I guess it was very difficult to get ready for it when we did not know what the plans were and we were not made aware of what was taking place.

Mr. Chairman: With regard to the committee, if I might, I have four people, but in fact if I could go to Richard Allen, I would like to cut the questions off at that point.

Mr. Allen: Thank you very much.

I appreciate the problem of funding that you have put before us, and that of financing because, if memory serves me correctly, as early as the Mayo commission there were suggestions that this kind of move ought to be accompanied by regional pooling of commercial-industrial assessments, and I think that would have solved a lot of funding problems in the region in this whole exercise. I see you nodding your head, so I really do not need a formal answer, I guess, to that one.

Second, can you clarify for me what your precise point is with respect to the point you make about your board having by far the largest percentage of French-speaking administration staff? Do I gather that your fear is that you will be unduly raided in the process, that it will be impossible to put the French board in place without undue reliance on your staff and that, therefore, you will need either some compensation for that in terms of personnel of equivalent training and expertise, or financial compensation or something like that? Is that the point you are making?

Mrs. Kehoe: Yes, sir.

Mr. Allen: Might I ask you about the pension fund? I was surprised to hear you say that it will be a burden for you to have the responsibility for the years that those teachers were in your board. Does that mean your pension plan is not funded?

Mrs. Kehoe: That is correct. It is an unfunded liability. The fact is that we would be losing our tax base. We would be left with this large amount of money, and the tax base would be gone. This has been paid as it arises, probably out of our centralized budget, and of course our centralized budget will be much less because we are going to be a much smaller board.

Mr. Allen: I have just one note on the question of equitability. I think it is a well-known term in law. I suspect it is difficult often to say inside a bill exactly what that means. Do you anticipate that it is possible to spell that out inside the bill? Is it your expectation that it will be a matter of fair negotiation between the parties, or do you see it not working well that way?

Mrs. Kehoe: I am concerned as well about the whole negotiation process. We have sent letters to the minister. They were faxed off on May 2. I

really believe that we have to sit down with the minister and be able to go over all of the problems. This has never happened before, this is a one-time thing. Our board is unique because of the very trustee ratio and pupil ratio.

I think we have to be able to sit down and discuss these things and see how we can work them out. We have to find a process. Right now we cannot sit down and negotiate. Nothing is confidential. We have real problems. I am so grateful. This is the first opportunity the majority-language group has publicly had to state our concerns, and they are urgent. It is urgent that we be invited to sit down with the minister and with senior ministry people and be able to voice those concerns, because we have not ever had this opportunity. This is the first.

Mr. Allen: We are very glad you are here. We are just sorry that time is so short—

Mrs. Kehoe: I am as well.

Mr. Allen: —because we would like to have a little more time with you.

Mr. Chairman: Thank you, Mrs. Kehoe. Mr. Power, thank you very much indeed.

Mrs. Kehoe: Thank you very much, Mr. Chairman and members of the committee.

Mr. Chairman: If we could call the Conseil des écoles séparées catholiques d'Ottawa forward, I repeat for those who are newly arrived that the English translation is on channel 7 and the French translation is on channel 8. I would point out to delegations that, as you can see, we are now 15 minutes behind. This does not in fact affect your time, but we would appreciate it if you would keep your presentation to within the half-hour period, and the half hour is supposed to include questions. Could you both state your names clearly for the benefit of Hansard, please?

CONSEIL DE L'ENSEIGNEMENT EN LANGUE FRANÇAISE
CONSEIL DES ÉCOLES SÉPARÉES CATHOLIQUES D'OTTAWA

Mme Gervais: D'abord, Monsieur le Président, laissez-moi corriger peut-être une erreur qu'il y a dans votre programme. Je suis Carmen Gervais, je suis présidente du conseil de l'enseignement en langue française du Conseil des écoles séparées catholiques d'Ottawa. Je suis en fait la méchante dont parlait Mme Kehoe. Alors, je suis dans le même conseil, mais responsable des francophones.

M. le Président: Merci beaucoup.

Me Bastarache: Mon nom est Michel Bastarache, je suis le conseiller juridique agissant pour le CELF.

Mme Gervais: Monsieur le Président, je sais que vous m'avez demandé de m'en tenir à une demi-heure, puis j'ai en fait l'intention de m'en tenir au mémoire que vous avez devant vous. Je vous ferai grâce de le lire, à cause du temps et surtout à cause du fait qu'il y a certains points qu'on voudrait souligner de façon particulière. Je dois vous dire, par contre, que je serai heureuse de répondre à vos questions, plus particulièrement en ce qui a trait à la présentation qui vient d'être faite. Je pense qu'il y a des choses qui devraient être clarifiées là-dedans.

M. le Président: Est-ce que les interprètes ont copie de votre présentation?

Mme Gervais: Ils en ont copie, oui; ils ont le document.

M. le Président: Très bien, merci.

Mme Gervais: Je dois d'abord m'excuser puisque je n'ai pas eu le temps de lire la traduction en anglais, elle vient juste d'être terminée. La version officielle, c'est la version française et le document a été rédigé en français. Je voulais seulement souligner ce fait-là.

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Je voudrais d'abord vous dire, au nom du Conseil des écoles séparées catholiques d'Ottawa, qu'on s'est déjà prononcés sur les principaux éléments du projet de loi et qu'on n'a pas changé d'avis, on demeure toujours convaincus, les francophones du Conseil des écoles séparées catholiques d'Ottawa, que le projet gouvernemental accorde une protection suffisante aux parents du secteur catholique, tout en réalisant l'intégration des services d'enseignement en langue française que requièrent les francophones d'Ottawa-Carleton pour assurer leur développement.

Bien que le CELF soit d'avis que l'ensemble du projet de loi portant réforme au système scolaire dans la région soit adéquat, il est quand même très préoccupé par certaines clauses spécifiques qui ont pour effet, d'après nous, de porter atteinte à l'égalité des contribuables francophones et anglophones.

Le présent mémoire servira essentiellement à faire ressortir les difficultés qui se présentent à cet égard puisque l'argumentation favorisant les solutions adoptées sur les autres points à déjà été faite - et je vous renvoie encore à notre premier mémoire - et que les atteintes aux principes d'égalité sont telles que la constitutionnalité de plusieurs dispositions est en cause.

On est généralement satisfait des compétences telles qu'énumérées, sauf qu'on trouve que le projet de loi va peut-être un peu trop loin. Vous avez mis parmi les compétences exclusives, irrévocablement exclusives, des choses qui sont déjà données dans la région, surtout dans le domaine francophone, en fait dans le domaine anglophone aussi, de façon conjointe. Entre autres, je pense que M^{me} O'Neill se souviendra de l'entente concernant les déficients moyens et profonds. On voudrait, si c'était possible, au moins que ça reste dans la section, qu'on puisse continuer à le mettre en commun et que ça ne devienne pas nécessairement quelque chose qu'on ne pourrait même pas négocier. On sent que les enfants sont très bien servis dans les structures qui sont là présentement; on ne voudrait pas les changer, et ce n'est qu'un exemple.

Alors, je voudrais souligner trois ou, peut-être, quatre points en particulier. D'abord celui qui, d'après nous, est fondamental, c'est qu'on semble traiter les écoles françaises de la région comme des écoles dissidentes, c'est-à-dire exceptionnelles. Nous sommes d'avis, et je pense que si vous lisez notre mémoire vous verrez que nous sommes d'avis que nous ne sommes pas dissidents; que ce n'était pas dans l'esprit de la Charte de nous considérer comme dissidents; qu'en fait, la Charte des droits et libertés prévoyait deux systèmes d'écoles parallèles financés à même les fonds publics.

A cause du fait que le gouvernement part du principe de la dissidence ou de l'exceptionnalité, il arrive un paquet de problèmes tels que, entre autres, les problèmes auxquels on fait face présentement à l'énumération. C'est-à-dire que les gens sont automatiquement pris pour acquis, sont automatiquement identifiés comme anglophones s'ils ne choisissent pas de s'identifier comme francophones. C'est un peu le principe sur lequel la confessionnalité ou le système confessionnel de la province s'appuie. C'est vrai dans leur cas parce qu'on retourne au Scott Act; mais dans le cas des francophones, on trouve que c'est faux, que c'est probablement inconstitutionnel, et notre avocat, M^e Bastarache, se fera un plaisir tout à l'heure d'aborder le point et de donner plus de détails sur ce point-là.

Aussi, dans le même esprit, à cause du principe de la dissidence, on n'a pas automatiquement accès aux taxes. Non seulement nous n'avons pas automatiquement accès aux taxes au niveau individuel, comme francophones toujours, mais nous sommes aussi pénalisés, si je me réfère... j'essaie de me souvenir du numéro de l'article, mais je sais qu'on indique, à un moment donné, que si un couple est conjointement propriétaire d'un édifice et qu'une des deux parties décide de s'identifier comme anglophone, les taxes vont automatiquement aux anglophones, ce qui est, d'après nous, encore une fois inconstitutionnel.

Aussi, nous voudrions attirer votre attention sur le fait que le même problème va en s'intensifiant, particulièrement dans le cas des personnes morales, des corporations, qui, encore une fois, sont prises dans le même dilemme, et surtout les francophones qui ne sont pas reconnus comme tels sous l'article 23.

En ce moment, je voudrais soulever le deuxième point, et puis je vais peut-être le rentrer avec celui-là. C'est qu'on remet en cause la constitutionnalité de francophones qui ne sont pas reconnus comme tels d'après l'article 23 mais qui sont catholiques et, donc, ont un droit constitutionnel supplémentaire de gérer leurs écoles catholiques ou l'éducation catholique. On remet en cause le fait que ces gens-là n'auront pas accès à cette gestion, plus particulièrement des gens qui n'ont pas d'enfants. Pour les gens qui ont des enfants, c'est facile: à un moment donné, ou ils sont dans des écoles françaises, ou on leur y donne accès à travers le comité d'admission au sein des écoles et ils deviennent admissibles d'après l'article 23.

Mais dans la région, 75 pour cent de nos contribuables n'ont pas d'enfants. Alors, les gens qui n'ont pas d'enfants, qui sont catholiques, francophones qui ne sont pas reconnus comme tels d'après l'article 23 mais qui veulent gérer leurs écoles et veulent se servir de leurs droits constitutionnels comme catholiques, n'auront pas accès à la gestion des écoles catholiques françaises. Je pense que, à un moment donné, vous allez avoir un autre mémoire qui touchera à ce point-là de nouveau mais, d'après nous, il est fondamental et il vaut la peine que vous vous repenchiez là-dessus.

On parle beaucoup de contestation judiciaire, au niveau de la confessionnalité, du pouvoir des catholiques de gérer exclusivement leurs domaines, mais il y en a deux - ou un, si vous voulez l'appeler tel - qui a été omis, d'après nous, puis c'est celui-là. C'est le fait que vous avez une classe de gens qui ne sont pas admissibles linguistiquement mais qui sont admissibles d'après leurs droits religieux et qui sont, en fait, francophones.

Donc, je vous laisse ça, puis nous répondrons aux questions tout à l'heure.

Une autre chose dont j'aimerais parler, c'est le partage des biens et le processus. Nous ne sommes pas souvent d'accord, M^{me} Kehoe et moi, mais sur cette chose-là nous sommes d'accord: notre conseil est quand même probablement particulier dans la région, en ce sens qu'il a une histoire d'éducation francophone qui remonte à il y a très longtemps. C'était probablement le premier conseil - de fait, on sait que c'était le premier - où il y avait des francophones. Comme il n'y avait pas d'éducation publique française dans le temps, tous les francophones étaient sous l'égide du Conseil des écoles séparées catholiques d'Ottawa; et les francophones insistent pour que, dans le partage des biens, on reconnaisse que le Conseil des écoles séparées catholiques d'Ottawa a très bien servi et les francophones et les anglophones. Les francophones du Conseil des écoles séparées catholiques d'Ottawa n'ont pas l'intention d'essayer de voler ou de prendre quoi que ce soit aux élèves anglophones.

Ici je vais toucher, de façon indirecte peut-être, au sujet de la Loi 75, mais je dois vous dire que le dilemme qui est survenu à la suite de la Loi 75, c'est que plusieurs personnes, dont moi-même, ont dû s'identifier à l'un des deux groupes linguistiques.

Maintenant, nous sommes fort conscients - j'ai répété cela dans le passé, puis je pense que mes antécédents le démontre - nous sommes fort conscients que nous avons un devoir auprès de notre population anglophone tout autant que de notre population francophone puisque lors des dernières élections nous n'avons pas été élevés - élevés: si ma mère était ici elle dirait, <Tu vois, Carmen?> - nous n'avons pas été élus pour représenter un des deux groupes linguistiques comme tel. Alors, bien qu'on se sente très à l'aise avec la Loi 75 puis très bien dans notre CELF, nous n'avons jamais exclu et nous n'avons pas l'intention d'exclure les droits des élèves anglophones de notre conseil.

Ce n'était pas dans ma présentation, mais à la suite de la présentation qui m'a précédée je me sens obligée de dire que nous avons un personnel extraordinaire au Conseil des écoles séparées catholiques d'Ottawa, dont l'allégeance n'est pas aux francophones ni aux anglophones mais vraiment au Conseil. Nous avons des gens qui sont au service de ce conseil-là depuis X années qui vont être déchirés quand viendra le temps où nous aurons le conseil scolaire de langue française, gens qui vont être déchirés dans leur âme autant que par le fait qu'ils seront obligés de choisir de rester dans un des deux conseils. Je vous avoue que, sous la Loi 75 - je ne me souviens pas des statistiques dont nous avons parlé tout à l'heure - probablement la majorité des gens choisira de rester dans les écoles séparées catholiques d'Ottawa parce qu'ils ne se voient pas comme francophones ou anglophones, il se voient comme desservant un conseil scolaire qui a très bien servi la population catholique de la région.

Je trouve déplorable qu'on suggère devant vous-mêmes que ces gens-là choisiront peut-être en masse d'aller vers le conseil scolaire de langue française et qu'ils ne sont pas qualifiés pour travailler avec les deux sections dans le partage des biens et immeubles. Je dois vous avouer que ça me surprend et que j'en doute fort.

Alors, Monsieur le Président, si vous me le permettez maintenant, je voudrais peut-être faire des suggestions. J'attire votre attention sur la page dix - j'essaie d'aller plus rapidement; si vous me le permettez, je voudrais la lire. Je vous dis d'abord que d'autres interprétations ont été suggérées dans les pages précédentes. Je fais référence à certains paragraphes en ce qui concerne le partage des biens et immeubles.

Donc, voulant prévenir une confrontation sur ce point-là, nous demandons que le gouvernement propose un texte législatif qui ne laisse place à aucune ambiguïté. A nos yeux, il faudrait donc reformuler le paragraphe 62(2), qui serait intitulé <Allocation des parts> et pourrait se lire comme suit:

<L'allocation de la part des biens et réserves à transférer aux termes du paragraphe (1) est faite en tenant compte de la contribution équitable des secteurs de langue française et de langue anglaise, respectivement, à la constitution de l'actif de chaque conseil de langue anglaise.>

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Le paragraphe 62(3) pourrait être éliminé puisqu'il ne fait que réaffirmer que le choix des biens à transférer doit être fait en fonction de l'objet de la loi, ce qui va de soi. S'il faut retenir absolument ce paragraphe pour inscrire dans la loi le critère mentionné, il nous paraît donc nécessaire d'éliminer la référence aux réserves, qui ne font pas l'objet d'un choix, et de relier les paragraphes 62(2) et (3). Le nouveau paragraphe pourrait donc être intitulé <Choix des biens à transférer> et se lire comme suit: <Les biens faisant partie de la part allouée au conseil de langue française aux termes du paragraphe (2) sont choisis en tenant compte de l'objectif de créer un conseil scolaire autonome.>

Ici j'attire votre attention sur le fait qu'on semble dire qu'il faut que le conseil scolaire justifie les fonds qu'il doit amener avec lui, mais on ne dit nulle part que le conseil scolaire de langue anglaise qui reste derrière doit aussi justifier pourquoi il doit garder la majorité de ses actifs. Alors, d'après nous, c'est deux poids deux mesures.

Au paragraphe 62(9), il ne faudrait pas créer de confusion entre l'allocation des parts et le choix des biens à transférer. Il faudrait donc modifier l'alinéa 62(9)a) pour dire: <soit que l'allocation des biens et réserves devant constituer la part du conseil de langue française ne représente pas une contribution équitable>. Il faudrait aussi modifier l'alinéa 62(9)b) en éliminant les mots <et des réserves>.

Monsieur le Président, je voudrais vous dire que les fonds dont on parlait tout à l'heure – et vous allez peut-être me poser la question, alors je vais essayer de la devancer – pour lesquels on n'a aucun argent, ce sont les gratuités de service ou gratuités de retraite. J'ai négocié des ententes collectives, et il n'y a pas un conseil dans la province qui a des fonds mis de côté pour ça. Cela s'appelle des <unfunded liabilities>. Ce ne sont pas des fonds de pension, ce sont des choses qui ont été négociées, et puis il n'y a aucun argent de mis de côté dans notre conseil présentement pour ces dettes.

Alors, il est faux de dire qu'il faut maintenant prévoir qu'on prendra des acquits pour les dettes puisque, d'abord, vous aviez raison tout à l'heure, Monsieur Campbell, quand vous m'avez posé la question: on va amener les dettes avec nous autres, et puis on reconnaît qu'il n'y a toujours aucun argent de mis de côté pour ça; puis tous les conseils fonctionnent de cette façon-là. Alors, on n'est pas unique en ce qui a trait à cette question.

Alors, j'ai fait un peu vite, peut-être que je n'ai pas touché à des choses. Je me fie à vous pour lire mon mémoire. J'ai des points, peut-être, que je voudrais souligner, mais si vous avez des questions, cela me fera plaisir d'y répondre. Et M^e Bastarache, qui est constitutionnaliste, aura aussi la chance, j'imagine, de répondre aux points juridiques.

M. le Président: Je vous remercie, Madame Gervais.

Mr. Campbell: I think we have to clarify the pension situation. I particularly mentioned to the last group that when you are talking about unfunded liability for sickness and accident, yes.

Ms. Gervais: No, for sickness and service gratuity. That is what it is.

Mr. Campbell: OK, but just to be clear that the pension situation is either the Ontario municipal employees retirement system if you are part of the OMERS plan for your nonteaching people, or the teachers' superannuation plan for teachers. Beyond your retirement gratuity for teachers, what do you have in place for nonteaching staff? Do you have the same retirement gratuities for nonteaching staff as for teaching staff?

Ms. Gervais: I believe, Mr. Campbell—and I know our director general is behind here, so maybe he can answer that question—I do not think that nonteaching staff have it. In fact, what we managed to do in the French section, when we negotiated the last agreement, was that we managed to grandfather it.

Not only that, but just to show you the willingness of the French sector to bring the liability with them, when we negotiated, contrary to what we did tell you previously, I think I had an agreement with the Ottawa Board of Education for a transfer of at least one school. In that, we had to negotiate with our English sector before they would sign, because it is a board matter, that we would take with us all unfunded liability as far as service gratuity is concerned for the teachers who have to be transferred within the context of Bill 30. There was a willingness to bring that with us.

Mr. Campbell: OK, but just to clarify once and for all on this thing, every single board and every single municipality in Ontario—

Ms. Gervais: That I know of.

Mr. Campbell: Well, I can tell you as a former municipal official, and having been on some of these committees, that every single one has an unfunded liability.

Interjection: No, that is not true.

Ms. Gervais: That I know of, anyway. I know that particularly when it comes—

Mr. Campbell: I would stand to be corrected if it is a small minority, but there is an unfunded liability for all of this kind of sickness and accident unless you have a sickness and accident plan in effect by a private carrier. But the self-funded ones have an unfunded liability.

Ms. Gervais: I think I should tell you, Mr. Campbell, that we often refer to reserves in our board.

Mr. Campbell: Yes.

Ms. Gervais: I think you should know that when our director general who is presently in place was hired by the board, he did give directives to start accumulating reserves towards that goal to try to fund this liability. Unfortunately, as in a lot of boards, the reserves are going for other things.

Mr. Campbell: Yes, but that is common practice in Ontario generally.

Ms. Gervais: I understand that, yes.

Mr. Campbell: Thank you.

Mr. Chairman: Are there any other questions or points?

M. Allen: Monsieur le Président, cela me fait plaisir d'avoir le mémoire de ce groupe, le conseil de l'enseignement en langue française de ce conseil scolaire. J'ai noté que la plus grande partie de votre commentaire est basée sur une perception de discrimination subtile dans la Loi sur l'éducation, dans le projet de loi 125, dans le projet de loi 109. Je veux dire seulement que je pense que vous avez raison et je veux considérer votre point de vue plus tard, mais j'accepte plusieurs de vos arguments sur ce sujet. Je considère, comme vous, que le but de cet exercice et de l'exercice du projet de loi 75 est d'établir un système régulier français pour les francophones de l'Ontario. Oui?

Mme Gervais: Oui.

M. Allen: J'apprécie beaucoup votre présence ici ce matin.

Mme Gervais: Est-ce que M^e Bastarache peut poursuivre sur le sujet de la dissidence? Je pense que c'est un point important.

Me Bastarache: Merci. Simplement pour renforcer un peu notre présentation là-dessus, le point que je veux souligner, justement, c'est celui-ci: si c'est un système régulier pour les francophones, il ne faut pas qu'il y ait de restrictions administratives à l'identification des francophones dans ce système. Il ne faudrait pas non plus être trop restrictif quant aux personnes qui peuvent entrer dans le système.

Sur ce plan-là, quand on parle justement de ceux qui peuvent choisir d'adhérer au système francophone, je ne crois pas qu'on devrait restreindre leur adhésion de façon significative en limitant la possibilité d'appuyer le système francophone à la catégorie de personnes visée à l'article 23. Bien sûr, nous reconnaissons que l'objectif premier, c'est de donner aux personnes protégées un système auquel elles auront accès. Mais on peut penser, par exemple, dans la région d'Ottawa, qu'il y a beaucoup d'allophones dont la première des langues officielles choisies est le français. C'est particulièrement le cas, je pense, des Libanais, des Vietnamiens et d'autres communautés dont la langue première n'est ni le français ni l'anglais mais dont la deuxième langue est le français.

Tel que rédigé, le projet de loi ne permet à aucune de ces personnes-là de choisir d'appuyer le réseau français, même si elles sont effectivement francophones. Et même une personne qui émigre au Canada de France et qui ne parle pas un mot de français, ne peut pas envoyer ses enfants au système français. Elle pourrait y envoyer ses enfants par le processus d'admission, mais elle ne peut pas diriger ses taxes vers le système français.

Cela nous paraît clairement discriminatoire, mais ça nous paraît aussi inconstitutionnel dans la mesure où ces personnes peuvent aussi être des catholiques: parce que si elles sont catholiques, elles ont un droit constitutionnel, en vertu de l'article 23, de gérer les écoles auxquelles vont leurs enfants. C'est ce qui a été prévu dans l'Acte Scott.

Alors, le Français catholique qui a émigré de Paris l'année dernière et qui se trouve ici, s'il inscrit ses enfants à l'école catholique française, d'après moi, a un droit constitutionnel de payer ses taxes à ce conseil et de participer aux élections pour ce conseil. Ce projet de loi, peut-être par inadvertance, crée un obstacle à cela et, en ce sens, réduit la proportion de la population française qui a accès au réseau francophone. On a signalé aussi que même parmi les personnes protégées par l'article 23, il y a une discrimination en faveur des copropriétaires.

Concernant le secteur industriel et commercial, quand on lit le projet de loi, tout ça a l'air d'être des mesures temporaires en attendant une plus grande réforme. Mais je ne crois pas que ça puisse justifier un système qui est clairement discriminatoire dans la façon dont il est décrit, en particulier quand on dit non seulement qu'il n'y a pas d'énumération ou de choix obligatoire de langue pour les entreprises mais aussi qu'une entreprise qui choisit d'appuyer le réseau français doit justifier cela en démontrant que ses actionnaires sont protégés par l'article 23, alors qu'on ne propose pas la même chose pour les anglophones. En ce sens-là, on fait vraiment du régime catholique un régime dissident et un régime qui, en conséquence, sera nécessairement sous-financé, en tout cas pour sa partie publique.

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M. le Président: Le terme français pour ceux qui parlent une langue autre que le français, c'est <allophone>?

Me Bastarache: Oui.

Mme Gervais: Est-ce que vous me permettrez, en terminant, juste de vous dire quelque chose? C'est que, d'abord, nous ne voudrions pas que les points que nous avons soulevés retardent la mise en place du conseil scolaire de langue française. Nous aimerions, autant que possible, travailler avec les gens du gouvernement, essayer d'améliorer le projet de loi et de faire des suggestions, mais nous ne voudrions pas qu'on se serve de ça pour retarder la mise sur pied du conseil scolaire de langue française.

Et puis j'attire encore votre attention sur le partage des biens. Pour nous, <équitable> veut dire équitable dans chaque conseil. Je pense que c'est quand même ironique que c'est seulement dans les deux conseils catholiques qu'on n'est pas capable de partager.

Alors, je vous remercie infiniment de nous avoir reçus. Nous demeurons à votre disposition. On a un paquet de bagage puisque ça fait, comme vous l'avez dit tout à l'heure, près de dix ans qu'on travaille dans le dossier. Vous allez me revoir de toute façon jeudi, et là je reviendrai sur certains points.

M. le Président: Madame Gervais et Maître Bastarache, je vous remercie beaucoup.

Mme Gervais: Merci beaucoup.

Mr. Chairman: If we could have the next group, please, it is the public education committee of the First Unitarian Congregation of Ottawa. Gentlemen, again, before you begin, would you repeat your names slowly for the benefit of Hansard, please?

FIRST UNITARIAN CONGREGATION OF OTTAWA

Mr. McDiarmid: Thank you, Mr. Chairman. My name is Donald McDiarmid and I am the chairman of the committee. I have with me George Haythorne, who is a member of my committee. The committee again, as you announced, is the public education committee of the First Unitarian Congregation of Ottawa.

We made a presentation to the Ottawa-Carleton French-Language Education Advisory Committee in which we suggested a considerable reorganization of education governance in the Ottawa region. We had in mind very much looking to the future to the needs of current society, and we proposed a coalescence of the two English boards into one component, a merging or coalescing of the two English separate boards into a second component, and the third component comprising the francophone community.

That third component would have two distinct parts—namely, public and separate—and we had in mind a structure somewhat similar to what is in the bill: namely, that a number of matters could be dealt with in common and others, such as education content and school operations, could be or would be the exclusive right of each of the three components in the French component in each of the two parts.

Our purposes in making that suggestion were threefold: (1) to support the wish of the francophone community to have a school system of its own where numbers are appropriate and to achieve this end in such a way that both the public and separate school supporters of that community are each accommodated; (2) to create a structure which enables and encourages the various elements of the entire education community to co-operate to the extent that they at any time mutually desire; and (3) to enhance the possibilities for administrative efficiency and economy.

We realize that such a proposal would likely take some time to achieve, and we are pleased that Bill 109 goes some way in that direction. As I mentioned at the outset, we are concerned to evolve our education system and its governance in such a way that it serves the current Ontario community, which is, I think you will agree, distinctly different from the community we had when present structures were evolved. We are now far more multicultural, far more multiracial and far more multi-religious. It is our belief that our education structures need to reflect those realities in a positive way.

We therefore applaud the proposed structure of the Ottawa-Carleton French-language school board as reflected in sections 3 and 4 of Bill 109. As I say, these go some way towards achieving the objectives I have just presented to you.

However, with respect to subsection 4(4), which reads, "The public sector and the Roman Catholic sector may by majority resolutions of both sectors transfer the exclusive jurisdiction over part or all of any matter described in paragraphs 19 to 29 of subsection (1) from the sectors to the full board," we find that rather more restrictive than we think it needs to be to protect the prerogatives of the various sectors. There are other subsections—subsections 4(5) to 4(8)—which, it seems to us, protect the right of any given sector or part thereof with respect to Bill 109 to protect its prerogatives as it sees fit.

At the same time, as I said before, we feel we need to devise structures that allow and encourage co-operation, because we feel that is the need of our current society. If both sectors individually felt it desirable to do

something jointly in the area of professional development, we cannot see why they should not be able to. We do not see that there is any danger to either sector in doing that. With regard to some advisory committees, I think both sectors may find it advantageous to do something in common there. We would urge you to consider seriously rewording that clause to permit greater flexibility to the two sectors, to each of those sectors, in discharging their responsibilities.

That is the substance of our brief. We are dealing, as you have gathered by now, more with principle than with detail. We leave the detail to those more familiar with the nuts and bolts. Thank you very much.

Mr. McGuinty: Mr. McDiarmid, with respect to your recommendation that the boards be amalgamated into three, I understand that one of the major boards currently would be very much opposed to that and, of course, the minister would be reluctant to impose upon a community something that is not widely accepted. In your view, do you think that the general feeling of the people in the community would favour this type of amalgamation?

Mr. McDiarmid: Are you referring to the greater amalgamation we proposed or to what we are dealing with now?

Mr. McGuinty: That is right, the amalgamation of the local boards into three: francophone, separate and public.

Mr. McDiarmid: I think you are right. There would be elements of the community that might not. I do not know that any of us know whether the majority would or would not. That has not really been put to them.

Mr. McGuinty: All right.

Mr. McDiarmid: Our feeling is that we must look to the future rather than to the past and that we must present to the community a vision more to the future than to the past.

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Mr. McGuinty: Surely. Also, I agree, whether it is good or bad, it is inevitable. I am curious about the second-last paragraph. You say, "at a time when the community has become immensely more multicultural, multiracial and multi-religious than was the case when present structures were devised." I do not know why or in what way the amalgamation of boards would enable them to serve these community needs more effectively.

Mr. McDiarmid: It would seem to me that it would allow greater co-operation between the various segments of our education community where they mutually decided it was desirable to do so. When you have separate boards, totally separate, then it seems to me you have a functional or a structural impediment to that co-operation. We have in mind diminishing that structural impediment.

Mr. McGuinty: Surely. Thank you very much, sir.

Mr. Chairman: Is Richard Allen out? Yes?

Mr. Haythorne: May I add one or two comments, Mr. McGuinty? Particularly in the Ottawa Board of Education, there has been excellent co-operation and co-ordination, in conducting the secondary schools

especially, but also some primary schools, beginning in 1966, as we said in our brief to the Roy committee. It would seem to us very desirable that that kind of co-operation, and the increasing co-operation that we feel is taking place between the public board and the Ottawa Roman Catholic Separate School Board, be encouraged. As Mr. McDiarmid has said, behind our recommendation was the thought that we would like to see all the elements working towards improving the education of our youth or providing high-quality education for our youth, working as closely together as possible in the interests of the whole community.

Mr. Allen: I appreciate the principle you brought before us and I understand, of course, that it has been in discussion for a number of years as an option in the Ottawa region. Since that is the case, and since the various boards have had that question before them as an option, I wonder if you have done any reflecting as to why it has proved impossible, in fact, to move to that degree of consolidation? Do you have an observation for us that would be helpful on that point?

Mr. McDiarmid: I think generally there is often a certain amount of inertia arising from the fact that this is the devil you know rather than the devil you do not know. A change brings with it at the time of its evolution a great deal of uncertainty as to where it will end up. But I believe that the Albert Roy committee heard presentations from some trustees in this area which were not distinctly different from ours, except in detail certainly. By that I mean proposals to achieve a greater degree of co-operation between education elements than exists today.

I think some people concerned with the governance of education in this area are giving some thought to that. I would not hazard a guess as to what fraction it might be.

Mr. Allen: The reason I ask the question is that it would seem, if that is a serious issue that you want to address as a group in the community, that you then would want to have some pretty precise idea as to what the obstacles are that have to be overcome in moving in that direction.

I wonder whether the simple question of inertia is the problem you are up against or whether, for example, you are not up against a question of whether the Carleton boards, which do not have as much of a commercial-industrial base, would be cut in on commercial-industrial taxation that the main Ottawa boards have. Are there not material matters like that which cut pretty close to the bone? I really just make the point in order to elicit from you whether you have a sense of where the principle impediments lie in moving in that direction.

Mr. McDiarmid: I think you mentioned one impediment which would have to be dealt with in an equitable way, certainly.

Mr. Haythorne: Mr. Allen, I think it is important to recognize that the Ottawa board has favoured amalgamation for some time, and, as Mr. McGuinty said, the Carleton board has not. Now, it is not too difficult to understand the reasons the Carleton board is not too anxious to amalgamate, looking at it from its own point of view, when amalgamation would in all probability result in higher taxes and in less control of its own area than it has now.

This morning Mr. Hansen, the chairman of the board, was interviewed on the CBC, and it was quite a good interview, I thought. In the interview he said that one of their concerns certainly would be higher taxes, but he also

acknowledged that there is good co-operation now between the Carleton and Ottawa boards. He listed, for example, the technical school and he listed Canterbury High School as two outstanding examples of the way they have been receiving benefits, substantial benefits, over many years from the Ottawa board.

It so happens, too, that the Ottawa board for many years—I should not say many, but for a number of years—was responsible for the operation of all the secondary schools in the Carleton area. The change was made not so very long ago, so there is a history of co-operation between these boards that goes back a long way.

I would have thought that the Carleton board might well begin to think about expressing some appreciation for the benefits it has received and is continuing to receive and look at this more from the standpoint of the good of the whole National Capital Commission, or at least Ottawa and Carleton. As long as they look at this almost exclusively from their own point of view, I think it is understandable that they would not want to amalgamate; but when they begin to see it in terms of what is best for the whole community, one would hope they might look at it in a little different way.

Mr. McDiarmid: Could I just add one final remark to that? I think they might be helped along a little bit in their thinking about it if they received some sort of positive indication from the ministry and from the government of Ontario that they think this would be a good thing for them to do.

Mrs. O'Neill: I would just like to ask very specific questions. Is there any membership in the First Unitarian Congregation of Ottawa from what used to be called the Carleton county area or the county of Carleton, all the municipalities that surround Ottawa?

Mr. McDiarmid: Is there any member on our committee?

Mrs. O'Neill: Does your congregation include people from Kanata, form West Carleton—

Mr. McDiarmid: Oh, yes. The congregation is the whole of the Ottawa region.

Mrs. O'Neill: And this is a unanimous decision of this committee?

Mr. McDiarmid: Yes.

Mrs. O'Neill: Is the committee attached in any way to any provincial associations or is it strictly local? Have you membership, as an education committee, on any education committees across the province?

Mr. McDiarmid: As an education committee, no.

Mr. Haythorne: But we have a close contact with the Ontario Public Education Network in Toronto.

Mrs. O'Neill: Are you talking about OPEN when you say public education?

Mr. McDiarmid: Our denomination, through the Canadian Unitarian Council, was a member—

Mrs. O'Neill: The Ontario public education committee—what committee is that?

Mr. Haythorne: That is a committee established in Toronto.

Mr. McDiarmid: I will just explain, if I might. Our denomination, through the Canadian Unitarian Council, was a member of the coalition.

Mrs. O'Neill: If I may, I consider I have to make corrections. When you say the Carleton Board of Education benefits from the Ottawa Board of Education, I hope you understand that the Carleton Board of Education pays full tuition—that is the actual cost, not the grant level for education—at any place in which it buys education. There is also education bought by the Ottawa Board of Education from the Carleton Board of Education, so if you want to call them benefits, they go both ways.

The other thing I feel I have to correct is when you say that the OBE is the only one that has provided secondary education shortly. That is like 20 years ago, so that is not a short time, really. I think we should be very accurate when we make these kinds of statements. We are talking about very equal partners here, and I feel it is very important to be fair.

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Mr. McDiarmid: Could I comment on one of your remarks? It is my understanding from talking to trustees of the OBE that payments made for certain services such as the school of the arts by the Carleton board do not meet the costs.

Mrs. O'Neill: I could not debate that, but I know that under ministerial guidelines they have every right to ask them to meet the costs.

Mr. Haythorne: My wife was on the board, so I know quite a bit about what was happening in the days when the OBE handled all secondary education in the public area. She was on the board in 1966 and earlier, and it went on for some years. I did not say a lot of years; I said some years.

Mrs. O'Neill: OK. I just wanted to correct it, because a lot of these people who are on this committee are not from Ottawa. I happen to be and I wanted to correct it, that it was 20 years ago approximately that this had happened.

Mr. Chairman: I appreciate your keeping to your time. Thank you very much. It is very good of you.

The next group is the Association canadienne-française de l'Ontario. For the benefit of the committee, Mr. Marchand will not be with us. Instead we have Fernand Gilbert, directeur général, and Anne Gilbert, coordonnatrice de la recherche of the association.

Bonjour. Pouvez-vous donner vos noms, lentement, à l'intention de Hansard et des interprètes?

M. Gilbert: D'accord. Fernand Gilbert.

Mme Gilbert: Anne Gilbert.

ASSOCIATION CANADIENNE-FRANCAISE DE L'ONTARIO

M. Gilbert: Monsieur le Président, mesdames, messieurs, permettez-moi d'abord de vous transmettre les salutations de M. Marchand et, en même temps, ses regrets de ne pas être parmi nous. Mais vous avez eu, plusieurs d'entre vous, l'occasion de le rencontrer et je pense que vous connaissez son attachement à l'éducation, son engagement vis-à-vis de la communauté et, également, son optimisme quant à l'établissement de conseils scolaires de langue française en Ontario. Alors, sans plus tarder, je vais vous présenter notre point de vue.

Depuis des générations, les francophones de l'Ontario réclament le droit à leurs institutions scolaires. Cette revendication porta d'abord sur la reconnaissance du droit à des écoles de langue française regroupant les élèves francophones sous un même toit, sous la direction d'enseignants francophones. Cette reconnaissance fut acquise progressivement depuis 1927 par l'abolition du règlement 17, jusqu'en 1968, avec la reconnaissance des écoles secondaires de langue française. La revendication s'est déplacée ensuite vers le droit à la gestion des établissements scolaires, l'évolution des 20 dernières années ayant prouvé aux francophones que s'ils veulent garder et assurer le développement de leurs écoles, ils doivent en assumer la pleine gestion.

Ce droit, d'ailleurs, leur a été reconnu par le jugement de 1984 de la Cour d'appel de l'Ontario, qui se prononçait en s'appuyant sur les provisions de la Charte canadienne des droits et libertés. Toutefois, un droit constitutionnel n'est pas suffisant pour donner aux francophones la gestion de leurs écoles. Il faut une volonté politique pour traduire ce droit dans des lois, et il faut une volonté politique pour que ces lois incitent à des gestes concrets.

En juillet 1986, le gouvernement de l'Ontario affirmait déjà sa volonté d'accorder aux francophones une forme de gestion scolaire en apportant, avec la Loi 75, des modifications à la Loi sur l'éducation. La création des conseils d'éducation de langue française a été accueillie très favorablement par la communauté francophone de la province.

Le projet de loi 109 portant sur la création d'un conseil scolaire de langue française pour Ottawa-Carleton est un pas de plus vers la gestion de l'éducation en langue française par les francophones. Les quelque 500 000 Franco-Ontariens que représente l'Association canadienne-française de l'Ontario l'accueillent d'autant plus favorablement qu'ils ont été confrontés à certains problèmes quand, dans la pratique, ils ont voulu voir appliquer la Loi 75.

L'ACFO appuie le projet de loi 109. Elle le considère comme une manifestation tangible de la volonté d'accorder aux francophones de l'Ontario la gestion de leurs écoles. L'autonomie qu'offre le projet de loi aux francophones de la région d'Ottawa-Carleton répond aux attentes de la communauté francophone quant à la gestion de leurs institutions scolaires locales.

Notre enthousiasme face à la création du conseil de langue française n'exclut cependant pas que nous ayons certaines inquiétudes quant au projet de loi 109. Des organismes francophones en éducation et les porte-parole de la communauté francophone d'Ottawa-Carleton vous ont fait ou feront encore, dans les prochains jours, des recommandations précises quant à des modifications nécessaires au projet de loi. Nous ne les répéterons pas ici. Nous voulons plutôt commenter certains des principes et des procédés qui sont à la base de

la restructuration proposée dans le projet de loi et qui pourraient s'avérer des éléments clés du devenir de l'éducation franco-ontarienne si le conseil scolaire de langue française d'Ottawa-Carleton devait servir de modèle ailleurs dans la province.

Notre première réticence à l'égard du projet de loi 109 vient de son manque de souplesse, qui traduit une compréhension limitée des problèmes de l'éducation en français en Ontario. Les limites imposées au regroupement des quartiers illustrent cette incompréhension. Le nombre peu élevé de francophones dans certaines municipalités de la région d'Ottawa-Carleton exige des regroupements pour fins de répartition des conseillers. Ces regroupements doivent tenir compte des facteurs géographiques et sociologiques de la population francophone et du vécu scolaire. Or, dans le projet de loi 109, on ne laisse pas à ces regroupements toute la flexibilité qu'exige le statut minoritaire des francophones. D'autres intervenants francophones en discuteront avec le Comité. Pour sa part, l'ACFO voudrait souligner que ce manque de souplesse nuit à l'objectif visé par la création des conseils de langue française, lequel est de permettre aux francophones d'exercer leur droit de pleine gestion scolaire.

Nous voudrions insister aussi auprès des membres du Comité sur la nécessité d'être particulièrement innovateur quand il s'agit de proposer une restructuration de la gestion scolaire de l'éducation en langue française, qui répond à des conditions fort différentes de celles qui régissent l'éducation dans la langue de la majorité. Le manque de sensibilité à l'égard du statut minoritaire de la population francophone est évident dans les règles qui s'appliquent pour déterminer le soutien scolaire en cas de litige. Rappelons d'abord que la Loi sur l'éducation actuelle ne définit pas de priorité sur le plan linguistique. Elle donne cependant une priorité en ce qui a trait à la confessionnalité, alors qu'elle accorde la préférence au système public lorsqu'il n'y a pas unanimité sur le choix du conseil auquel un groupe de personnes veut contribuer.

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Dans le projet de loi 109, les conseils anglophones bénéficient du même type de préférence lorsqu'il n'y a pas unanimité quant à la destination des taxes scolaires. Cette logique, qui en quelque sorte fait du conseil de langue française un conseil de deuxième classe, est difficile de faire accepter par quiconque sait la fragilité de l'éducation dans la langue de la minorité. Elle va d'ailleurs à l'encontre de l'esprit de l'article 23 de la Charte canadienne des droits et libertés, qui stipule des droits égaux aux francophones et aux anglophones dans le domaine de l'éducation. L'ACFO ne peut y souscrire, que ce soit pour Ottawa-Carleton ou pour une autre région de l'Ontario.

Cette question de l'égalité des conseils de langue française et des conseils de langue anglaise est au coeur des préoccupations que nous avons au sujet du financement du conseil scolaire de langue française d'Ottawa-Carleton. Il est essentiel que celui-ci ait accès à des ressources financières suffisantes pour lui permettre d'offrir l'ensemble des programmes et des services requis pour assurer un enseignement de qualité aux élèves de langue française. Cette qualité ne doit pas être inférieure à celle dont jouissent les élèves de langue anglaise dans Ottawa-Carleton.

L'Association des enseignantes et des enseignants franco-ontariens a déjà invité le gouvernement à corriger les faiblesses du projet de loi en ce qui a trait à cette question du financement du conseil de langue française. Nous appuyons totalement les recommandations qu'elle vous a transmises. Comme

l'AEFO, nous sommes profondément convaincus qu'un droit de gestion des francophones qui ne s'accompagne pas de garanties financières pour l'éducation franco-ontarienne, catholique et publique, n'a aucune portée. Il est essentiel que le projet de loi 109 contienne de telles garanties, et non seulement de façon intérimaire.

Le financement de l'éducation franco-ontarienne, que ce soit dans Ottawa-Carleton ou ailleurs dans la province, exige des stratégies particulières. L'ACFO croit qu'il est de son devoir de le rappeler au Comité. Les méthodes choisies pour financer l'éducation dans la langue de la majorité ne sont pas nécessairement les plus appropriées pour permettre à des conseils de langue française d'atteindre leurs objectifs éducatifs. Les ressources allouées à de tels conseils ne peuvent l'être en fonction des nombres seulement. Il faudra faire preuve ici également de toute la flexibilité nécessaire pour garantir aux francophones le respect de leurs droits.

En guise de conclusion, nous voudrions souligner que le gouvernement de l'Ontario a montré, avec le projet de loi 109, sa capacité d'innover. Le mode de structure que propose le projet de loi répond, malgré ses imperfections, aux attentes de la communauté francophone, qui le voit comme un outil qui favorisera à long terme son développement si on lui assortit un financement adéquat.

Nous croyons que le gouvernement doit poursuivre dans la voie qu'il a choisie pour Ottawa-Carleton et procéder à la création d'autres conseils scolaires de langue française dans la province, et notamment dans les régions où les francophones sont en nombre important. Ailleurs, là où les populations francophones sont plus dispersées, il faudra prévoir aussi, sur des bases différentes, une restructuration des institutions scolaires locales pour donner aux francophones la gestion de leurs écoles. Nous enjoignons au gouvernement d'établir immédiatement une commission qui, après analyse des caractéristiques particulières de la francophonie ontarienne dans chacune des régions, procédera à la mise en oeuvre d'un réseau de conseils scolaires à l'échelle de la province. L'ACFO et les organismes francophones en éducation vous réitèrent leur engagement à collaborer activement avec cette commission.

Monsieur le Président, mesdames, messieurs, je vous remercie.

M. le Président: Je vous remercie, Monsieur Gilbert. Are there any questions or points?

M. Allen: Merci beaucoup de votre mémoire. Nous sommes heureux d'apprendre que vous considérez ce projet de loi comme adéquat comme base du développement futur des conseils scolaires régionaux des minorités francophones. Comme vous, je pense que le point le plus important est le financement d'un tel conseil.

Mais à l'égard de l'avenir, comme vous avez insisté sur le principe central et principal du projet de loi, je me souviens que, dans le passé, nous avons poussé le gouvernement fortement vers un tel objectif et nous avons établi une commission, sous le projet de loi 75, pour étudier la possibilité de tels conseils régionaux partout dans la province. Nous attendons le rapport de cette commission avec une impatience chaleureuse.

Je n'ai pas de question pour vous, mais j'apprécie beaucoup le point essentiel de votre mémoire concernant l'avenir des conseils scolaires pour les francophones de l'Ontario.

M. le Président: Monsieur Gilbert, avez-vous des points à soulever?

M. Gilbert: Oui. J'aurais peut-être un commentaire à ajouter, et c'est un commentaire général concernant le système d'éducation actuel et surtout le pas décisif qui sera franchi dans le cas de la francophonie ontarienne.

Je pense qu'il faut non seulement situer le conseil scolaire dans le domaine de l'éducation mais également le considérer du point de vue de la contribution que les francophones souhaiteraient apporter à cette province, et c'est un des instruments pour le faire. Vous êtes sans doute au courant du fait que notre communauté est frappée d'un taux très élevé d'analphabétisme. Vous savez que notre communauté participe aux études postsecondaires, je dirais, de façon quasi inquiétante: notre taux de participation est la moitié de celui de la population anglophone.

Tout cela est relié à des situations sociologiques et culturelles, et je pense que l'établissement de conseils scolaires où la culture et la langue seraient françaises, conseils contrôlés par des francophones, permettrait à long terme de corriger cette faiblesse. Cela non seulement amènerait une certaine correction mais également, je pense, arriverait à diminuer les coûts sociaux entraînés par le niveau d'éducation moins élevé, non seulement de la communauté francophone mais de la population en général.

Je pense que vous avez là l'occasion, et il me semble que c'est votre responsabilité, de créer des conseils de langue française qui non seulement permettront à la communauté de mieux contribuer au développement de l'Ontario mais contribueront également à harmoniser, de mieux en mieux, les rapports sociaux en Ontario. Et c'est là, Monsieur le Président, mesdames et messieurs, le commentaire que je souhaitais apporter.

Mrs. O'Neill: Mr. Gilbert, I am really excited about taking the message you bring to Mr. Shapiro and the honourable Chris Ward that the Ministry of Education is creative. That has to be refreshing to those two gentlemen and to those of us who work with them. Thank you very much for that comment.

I wanted to ask this question of other groups who presented this morning; the opportunity did not present itself within the time frame. I think in your position you may be able to answer it. We have had brought to us by many groups, some of them this morning and some before this time, the problem of the definition of a francophone that is limiting by article 23 of the charter. Has there been any intent by francophones—and yours is one of the umbrella groups; that is why I am asking you—to take this to the federal level, where the charter was designed and can be amended?

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M. Gilbert: Belle question. Mais je crois, Madame O'Neill, que vous avez parfaitement raison. Arriver à mieux cerner ce qu'on signifie par cette question, cette réalité... comment pourrait-on mieux le cerner? Je ne sais pas si, finalement, c'est devant les tribunaux. Je préférerais qu'on la définisse entre nous, c'est-à-dire entre la communauté et entre vous qui nous représentez à l'Assemblée législative, puisqu'il me semble que nous devrions non seulement arriver ensemble à définir la francophonie et ce que c'est qu'un francophone, mais arriver à définir ensemble la sorte d'Ontario que nous voulons voir dans le Canada qu'on essaie de définir actuellement avec le lac Meech, avec le libre-échange et avec un certain nombre d'autres dossiers nationaux aussi.

Je vous relancerais la balle et je vous dirais, pourquoi ne créerait-on pas... et ça pourrait être une question débattue au comité de liaison qui a été mis sur pied par le ministère. Peut-être que nous pourrions commencer à cerner, à éplucher davantage la signification de cela avant d'aller devant les tribunaux pour qu'ils tranchent cette réalité pour nous et pour vous.

Anne, auriez-vous un commentaire?

Mme Gilbert: Vous avez déjà eu connaissance, par le processus politique qui caractérise le Canada, de notre incapacité à certains moments de faire changer des éléments aussi importants que la constitution. Il est sûr que nous travaillons de concert avec les autres associations francophones du Canada à faire évoluer, à faire avancer le processus de négociation constitutionnelle en faveur des francophones, de façon à nous permettre, à travers la Charte des droits, par exemple, d'avoir des garanties plus explicites de nos droits. Mais à côté de ça, nous pensons qu'en Ontario, on peut déjà pallier certaines imprécisions de la Charte des droits peut-être; qu'on peut, politiquement, chez nous, clarifier dans nos lois ce qu'on veut donner à la population francophone dans le domaine de l'éducation, et qu'on peut faire des corrections à la Loi sur l'éducation de l'Ontario.

M. le Président: Merci, Madame Gilbert.

Mrs. O'Neill: If I may just comment, this is a concern, certainly, to several of us as individuals and as party members. The time frame on this is very difficult in changing the interpretation of a charter clause. I do think your suggestion is excellent that this be one of the very first things we discuss with this new body that has been created, because it is a very fundamental right, and the interpretation of that right is going to be very difficult under the circumstances that exist and the agreements that have been made in definition of who a francophone is. I guess, as you suggested, maybe when the charter clause was framed, there were just so many things. I was part of some of the briefings that went into that; I know that the time lines there, again, were very short, and likely some of those things were overlooked. Let us hope we can work together in improving that definition.

M. Villeneuve: Merci bien de votre présentation, qui était très bien conçue.

Une petite inquiétude que j'ai dans votre présentation, en haut de la page trois, c'est le <manque de souplesse>, d'après l'ACFO, <qui traduit une compréhension limitée des problèmes de l'éducation en français en Ontario>. Est-ce que ça se limite au projet de loi 109, ou est-ce que ça fait partie peut-être du projet de loi 125, côté énumération? Nous savons qu'il y a des difficultés dans ce domaine, et espérons que nous pourrons les éclaircir.

Ce qui m'inquiète un peu aussi, c'est qu'aussitôt que nous essayons de définir ou d'encadrer ce qu'est un francophone, est-ce qu'on ne se limite pas un peu? Je crois que le but du projet de loi 109, la création d'un conseil scolaire français ici, est de pouvoir s'épanouir et non de se limiter. Je voudrais avoir vos commentaires là-dessus. La souplesse est ce qu'on veut.

M. Gilbert: Je vais faire un premier commentaire et Anne pourrait ajouter à ce que je vais dire. Je pense qu'on devrait faire attention lorsqu'on parle de souplesse. Ici on pourrait se référer facilement à plusieurs définitions du concept de souplesse. Je pense qu'il y a une souplesse, une compréhension géographique de notre situation - et il ne faut pas l'oublier - à cause de l'étendue du territoire de l'Ontario et de certains

endroits où les nombres sont plus limités; ce qui fait qu'il faut avoir une certaine souplesse pour permettre d'y inclure des nombres un peu plus éloignés géographiquement.

Cela, c'est une première compréhension de souplesse. L'autre pourrait être non seulement une souplesse géographique mais – et là je saisis l'occasion que vous m'offrez – une souplesse dans les programmes d'études, les <curriculums>. Je suis parfaitement conscient que ça ne fait pas partie de cette table-ci, mais je pense que ce gouvernement-ci et cette province-ci, dans un Canada qu'on veut bâtir, doivent avoir à l'esprit cette souplesse qui tient compte des caractéristiques de la culture, de l'histoire. Sinon, même si vous avez une souplesse géographique mais qui ne donne pas d'outils, qui ne donne pas un encadrement pour permettre à cette communauté francophone de s'épanouir, donc d'avoir un certain nombre de programmes d'études peut-être différents, je pense que les deux vont de pair.

Avez-vous des commentaires?

Interjection.

M. Gilbert: C'est vrai, j'ai bien fait ça.

M. Villeneuve: Et puis la souplesse pourrait s'orienter aussi vers ceux qui veulent consacrer leurs taxes à un certain système. Je sais qu'il y a un manque de souplesse en ce moment, et je me demandais si c'était dans les programmes d'études ou si c'était une souplesse globale dont vous parliez, où il faudrait aller chercher à bel et bien desservir ces gens avec la souplesse dont je crois que vous parliez.

Mme Gilbert: Bien, justement. Cette souplesse-là, on l'a relevée à la page trois au niveau géographique; on l'a relevée un peu plus loin dans notre mémoire en ce qui concerne la destination des taxes scolaires. Nous pensons qu'il est essentiel que le conseil scolaire de langue française soit assuré d'un minimum financier, non seulement pour être créé et pour survivre quelques années mais pour survivre à long terme. Quand on pense à souplesse dans le cas de l'éducation en français, on ne pense pas à une organisation du système qui soit exactement la même que celle à laquelle on pense pour l'éducation dans la langue de la majorité. On doit avoir un système géographique qui traite les nombres autrement et on doit avoir un système financier qui ne s'appuie pas uniquement sur les nombres, de façon à pouvoir permettre un minimum vital garanti au conseil scolaire de langue française et aussi à ses deux sections. Il faut penser, dans le cas du projet de loi 109, que l'on a affaire ici à un conseil scolaire qui réunit deux entités, si on veut, et que chacune de ces entités-là doit avoir la chance de pouvoir survivre. Il y aura probablement des coûts supplémentaires reliés au fait de l'adjonction de deux structures dans une, coûts dont le financement devra tenir compte aussi.

M. Villeneuve: Alors, ce dont vous parlez est certainement le projet de loi 109, mais aussi le projet de loi 125: la façon d'énumérer, la façon de consacrer ses taxes à un conseil scolaire particulier. Vous parlez plutôt d'une souplesse globale.

Mme Gilbert: Globale.

M. Villeneuve: Merci.

M. le Président: Y a-t-il d'autres questions pour Mme Gilbert et M. Gilbert? Sinon, nous vous remercions. Merci beaucoup.

M. Gilbert: Merci.

Mme Gilbert: Merci.

Mr. Chairman: Ladies and gentlemen, that ends our hearings for this morning. We will reconvene here at two o'clock.

The committee recessed at 12 noon.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON

WEDNESDAY, MAY 25, 1988

Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)
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Beer, Charles (York North L) for Mr. Tatham
Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr. Cousens

Clerk: Carrozza, Franco

Witnesses/Témoins:

Du Conseil de l'enseignement en langue française, Conseil d'éducation de Carleton:

Labrosse, Diane, présidente
Jubainville, Raymond, secrétaire administratif
Huneault, Gérard, surintendant des écoles de langue française

From the Parent Trustee Advisory Committee (English Sector), Ottawa Roman Catholic Separate School Board:
Ablett, Kathy, Chairman
Sutcliffe, John
Dalton, Frank
Dole, Paul

From the Ontario English Catholic Teachers' Association (Ottawa Unit):
Charland, Rhena, President
Tobin, Carol Ann, Member, Executive Committee
Howard, Paul, Member, Provincial Secretariat

Individual Presentation:

Marleau, Gilles

Du Comité de liaison du Conseil scolaire d'Ottawa:

Ferrand, Yvon
Johnston, Denise
Yamasaki, Marguerite
Landry-Kennedy, Mireille

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, May 25, 1988

The committee resumed at 2:03 p.m. in the ballroom of the Skyline Ottawa.

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
(continued)

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON
(suite)

Consideration of Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Etude du projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

Mr. Chairman: These are hearings on Bill 109. If I could, I would point out for those of you who were here this morning that we are now down at a much lower, more modest level than we were this morning. We were on a platform. I am pleased about that.

The English translation is on channel 7 of your devices and the French is on channel 8. I would mention to all groups that we regret it, but there are 30 minutes for each presentation, including questions. We would be most grateful if you would keep closely to that.

Our first group, I understand is the Conseil de l'enseignement en langue française du Conseil d'éducation de Carleton. I would be grateful if you would carefully mention your names into the microphones for the benefit of Hansard and the translators before you begin, please.

CONSEIL DE L'ENSEIGNEMENT EN LANGUE FRANÇAISE
CONSEIL D'ÉDUCATION DE CARLETON

Mme Labrosse: Monsieur le Président, merci. Mon nom est Diane Labrosse. Je suis la présidente du Conseil de l'enseignement en langue française du Conseil d'éducation de Carleton. M'accompagnent notre surintendant des affaires francophones, M. Gérard Huneault, et notre secrétaire administratif, M. Raymond Jubainville.

Je voudrais préciser, avant de commencer, que notre texte est assez long. Je vais peut-être en sauter des extraits pour pouvoir permettre un échange de questions et de réponses, mais le contenu nous est très important. Alors, je vais m'en tenir sensiblement à ce que vous avez devant vous.

Monsieur le Président, membres du Comité, permettez-moi, au nom du Conseil de l'enseignement en langue française du Conseil d'éducation de Carleton, de vous remercier de nous offrir cette occasion de vous présenter nos réactions sur le projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

C'est certainement avec des émotions partagées que je me présente devant vous aujourd'hui. Depuis les années 70, le Conseil d'éducation de Carleton et

ses représentants francophones siégeant alors au Comité consultatif de langue française ont appuyé de façon consistante la mise sur pied d'un conseil scolaire homogène de langue française. Au moment où le gouvernement s'est enfin engagé à agir, je me vois dans l'obligation de vous dire, au nom du Conseil de l'enseignement de langue française, merci, mais non, merci.

Ce que le gouvernement de l'Ontario nous offre n'est pas ce que les francophones de la région ont demandé depuis 1974. J'espère, dans cette présentation, élucider pourquoi ce projet de loi est inacceptable dans sa forme présente.

Depuis une vingtaine d'années, les francophones de la région ont demandé la mise sur pied d'un conseil homogène de langue française; un conseil qui desservirait tous les francophones, peu importe leur religion, leurs origines, leurs croyances. Ce que le gouvernement nous offre en pratique, ce sont trois conseils scolaires de langue française portant, pour satisfaire les apparences politiques, un seul nom. Ce que le gouvernement nous offre, c'est une structure coûteuse et complexe, suradministrée et sous-financée.

Je vous assure que le CELF du Conseil d'éducation de Carleton a réfléchi longuement avant d'en arriver à vous présenter aujourd'hui cette position. Après tant de luttes et de demandes, nous aurions souhaité éviter d'en venir à cette conclusion. Nous aurions certainement préféré venir ici vous offrir nos félicitations pour un projet de loi qui, dans un geste historique, reconnaissait aux francophones le droit de gérer pleinement leurs institutions scolaires. Nous avions rêvé de venir célébrer le dépôt d'un projet de loi innovateur, mais tel n'est pas le cas.

Nous croyons qu'à titre de représentants élus des francophones, nous devons défendre le mieux-être des francophones de l'Ontario. Nous ne pouvons accepter que, pour respecter les exigences constitutionnelles et politiques, le gouvernement nous impose une structure de gestion qui sera néfaste à la prestation de services éducatifs de qualité pour les francophones de la région. Nous considérons qu'à titre de représentants élus ayant à coeur la qualité de l'éducation offerte aux francophones, nous avons la responsabilité pénible de nous prononcer clairement contre ce projet de loi.

Dans sa conceptualisation et dans son élaboration, le projet de loi 109 refuse de reconnaître les francophones sur un pied d'égalité avec la majorité anglophone. Il est construit sur la prémisse que les francophones sont un groupe dissident. Autant dans sa façon de déterminer les électeurs, d'identifier les contribuables et de financer le conseil scolaire de langue française que dans le langage employé tout au long du document, le projet de loi traite les francophones comme des citoyens de seconde classe ou des dissidents. On ne parle plus de deux groupes linguistiques traités sur un pied d'égalité. Un électeur qui ne s'identifie pas comme francophone est automatiquement considéré comme anglophone. Un contribuable qui ne s'identifie pas comme francophone voit ses taxes dirigées automatiquement au conseil anglophone. Dans une situation de copropriétaires, le francophone est sujet à la décision de son partenaire pour pouvoir diriger ses taxes au conseil de langue française.

Bref, à moins d'avis contraire, nous sommes tous perçus comme des anglophones. Pourriez-vous vous imaginer le tollé si les rôles étaient renversés? Imaginez la situation si tous les contribuables étaient automatiquement francophones, à moins qu'ils ne posent un geste précis pour s'identifier comme anglophones. Imaginez-vous la situation si tous les impôts étaient dirigés automatiquement au conseil de langue française, à moins que la

corporation ou l'individu ne l'indique autrement par un geste précis. Imaginez-vous la réaction des conseils publics anglophones si le ministre de l'Education annonçait que les conseils publics de l'Ontario n'auraient plus accès à la taxe industrielle et commerciale à compter du mois de janvier 1989. Pourtant, c'est cela qu'on offre aux francophones de la section publique.

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Le projet de loi traite les francophones comme un groupe dissident et non comme des partenaires à part égale. Il établit, en fait, une autre forme de conseil séparé dans la province. Le langage utilisé est clair. Le financement proposé le démontre sans ambiguïté. Nous avons déjà des conseils séparés dans la province, et depuis au-delà de 100 ans, leurs représentants et représentantes affirment que leur statut est injuste et inégal. Alors, pour répondre aux besoins des francophones, on nous propose une approche similaire et on s'attend que nous nous en réjouissons. Les francophones n'ont pas demandé au gouvernement de créer de nouveaux conseils séparés mais plutôt d'établir un conseil scolaire de langue française.

Dans notre réaction préliminaire au document de consultation distribué par le gouvernement avant le dépôt du projet de loi, nous avons souligné quelques-unes de nos préoccupations concernant les intentions du gouvernement. Nous vous présentons de nouveau cette réaction en annexe. Advenant que le texte de loi puisse être modifié pour refléter l'égalité linguistique soulignée ci-dessus, nous continuerons à lutter pour assurer que les dispositions de la loi reflètent les principes de base présentés en 1986 devant le comité Roy par le Comité consultatif de langue française.

Tel que nous l'avons énoncé dans notre réaction au document de consultation, le projet de loi ne satisfait pas les quatre principes cités plus haut dans le texte de notre mémoire. Dans cette réaction, nous avons affirmé que les mécanismes inadéquats de financement et la structure administrative surchargée priveraient les francophones d'un contrôle réel et efficace de la gestion des écoles de langue française. Le sous-financement décrit dans le projet de loi priverait tous les francophones, et particulièrement ceux du secteur public, que je représente, des chances égales de vivre pleinement dans notre société canadienne moderne.

Le francophone du secteur public devient, par ce projet de loi, un citoyen de deuxième classe. Cela est inacceptable. Des exigences constitutionnelles et politiques, et non l'élève francophone, sont au coeur du projet de loi. Les mécanismes de financement n'assurent pas le respect du jugement de juin 1984 de la Cour d'appel de l'Ontario.

Face à cette situation, le Conseil de l'enseignement en langue française du Conseil d'éducation de Carleton demande à l'Assemblée législative de l'Ontario:

1. De retirer le projet de loi 109 dans sa forme actuelle;

2. De présenter un nouveau projet de loi qui respectera les francophones comme partenaires égaux et leur offrira des mécanismes de gestion entière, réelle et efficace de l'éducation des francophones, avec des sources de financement suffisantes pour respecter le jugement de la Cour d'appel de l'Ontario;

3. De reporter la mise en oeuvre du conseil scolaire de langue française tant et aussi longtemps que le gouvernement n'aura pas terminé la révision tant annoncée du financement de l'éducation en l'Ontario.

Nous l'avons répété à maintes occasions: ce projet de loi revêt une importance tellement grande pour l'ensemble de la collectivité francophone de la région et de tout l'Ontario puisqu'il servira possiblement de modèle à d'autres juridictions. Il aura des répercussions immédiates et à long terme sur chaque enfant francophone, dont l'éducation et les chances dans la vie dépendront du succès de cette initiative.

Nous touchons ici à la vie d'individus et à leur capacité de s'intégrer pleinement dans notre société ontarienne et canadienne d'aujourd'hui et de demain. Nous traitons ici de la survie à long terme de la collectivité francophone en Ontario. Nous ne pouvons donc nous permettre d'agir à la hâte et à l'improviste. Depuis l'engagement du ministre de l'Éducation en 1985 d'établir un conseil scolaire de langue française dans la région, nous avons demandé le dépôt d'un projet de loi. Le gouvernement a choisi d'attendre jusqu'à la dernière minute, nous demande d'appuyer inconditionnellement un projet de loi et de le mettre en oeuvre à toute vitesse. Cela est nettement inacceptable. Alors, je vous dis merci, mais non, merci.

Maintenant, pourquoi retarder la mise en oeuvre?

Parce que le gouvernement a déjà à l'ordre du jour de l'Assemblée législative sept projets de loi différents qui auront des répercussions sur les conseils scolaires et qui, en bon nombre, changeront les règles du jeu pour les prochaines élections scolaires. Les échéances pour la mise en oeuvre d'une toute nouvelle structure scolaire avant les prochaines élections sont inacceptables et ne permettent pas à la population francophone d'être suffisamment informée de ses droits et de ses responsabilités dans un domaine aussi essentiel à sa survie collective. Ce projet de loi est trop important pour qu'il soit adopté sans une période prolongée de consultation avec toute la population et sans que la population francophone ait amplement l'occasion d'y réagir en connaissance de cause.

Parce que les données réelles sur le recensement municipal ne seront pas disponibles avant la fin de juillet et que nous ne saurons pas si la campagne massive d'information aura porté fruit pour identifier les francophones.

Parce que le recensement effectué en 1988 excluait d'une pleine participation comme électeurs et contribuables francophones, des personnes dont la langue principale des deux langues officielles est la langue française mais qui ne sont pas reconnus comme francophones selon la définition de la Loi sur l'éducation.

Parce que les conseils scolaires sont encore en voie de s'adapter aux répercussions financières, administratives et psychologiques de la Loi de 1986 modifiant la Loi sur l'éducation, le projet de loi 30. Vous n'êtes pas sans savoir que le projet de loi 30 a eu des répercussions énormes sur la population francophone et sur la prestation de services éducatifs aux élèves francophones. Il serait certes avantageux pour tous les gens concernés si les retombées de ce changement majeur avaient le temps de se résorber avant que l'on n'ose établir un conseil scolaire de langue française où les deux secteurs, public et séparé, devront travailler étroitement ensemble à l'intérieur d'un conseil plus ou moins unifié. Le fonctionnement du Comité de planification de l'enseignement en langue française ne laisse pas présager que les intervenants seront prêts à oeuvrer dans un conseil unifié. Depuis le 8 février, ce comité n'a réussi à obtenir quorum qu'une seule fois.

Parce que plusieurs groupes ont menacé d'entreprendre des poursuites judiciaires sur une base constitutionnelle dès que le projet de loi aura reçu

la sanction royale. Osons-nous chambarder la prestation des services éducatifs de toute une population alors que la Cour jugera peut-être quelques mois plus tard qu'il faut tout recommencer?

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Parce que le gouvernement est présentement en voie de planifier une refonte complète du financement de l'éducation en Ontario. Allons-nous bouleverser les structures scolaires pour les francophones pour nous rendre compte dans deux ans que ce nouveau conseil n'est plus viable financièrement et qu'il devra offrir une éducation de moindre qualité? Les mesures provisoires du financement peuvent peut-être s'avérer valables pour quelques années, et je dis bien peut-être, car elles sont loin d'être mises au point. Mais nous ne sommes pas en voie d'établir un conseil pour quelques années. Nous avons besoin de garanties à long terme plus solides que des promesses politiques. Je vous rappelle que nous parlons ici de l'avenir de jeunes enfants. Faisons les choses à moitié aujourd'hui et nous en ressentirons longtemps les effets. Je ne veux pas risquer l'avenir de mes deux enfants ni celui des enfants de mes électeurs et de mes contribuables. Il est essentiel que les mécanismes de financement à court et à long terme soient clairement établis avant que le projet de loi ne soit entériné et avant que la loi ne reçoive la sanction royale.

Parce que ce projet de loi est tout simplement inacceptable dans sa structure, dans son langage et dans ses prémisses de base. Il se doit d'être repensé pour traiter les francophones comme des citoyens de première classe, à part égale avec les citoyens anglophones. Cette refonte ne peut être effectuée à temps pour la mise en œuvre de 1988. Nous ne voulons pas de demi-mesures.

Le CELF du Conseil d'éducation de Carleton demande donc au gouvernement de ne pas agir avec empressement pour offrir aux francophones des solutions mitigées. Nous voulons un conseil de langue française, mais non aux dépens de la qualité de l'éducation offerte à nos francophones.

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Tel que j'ai souligné au début de ma présentation, nous sommes insatisfaits de ce projet de loi tant attendu, et c'est avec regret que nous devons venir ici aujourd'hui vous dire merci, mais non, merci. Nous croyons néanmoins accomplir ainsi notre devoir et assumer nos responsabilités de francophones élus pour représenter les francophones. Accepter un projet de loi inadéquat serait, à notre avis, d'abdiquer notre responsabilité envers la francophonie de la région.

Je vous remercie de votre attention et c'est avec plaisir que je répondrai à vos questions.

M. le Président: Je vous remercie, Madame Labrosse. Y a-t-il des questions?

Mr. McGuinty: If I may preface my question with a brief remark, as one who has lived in the Ottawa area all his life, who was a teacher for 31 years and a trustee for 16, and who worked long and hard on behalf of the cause for a French-language board in the Ottawa area and looked upon that as the logical extension of that evolution that was under way after 1965, prior to which time the French-speaking people did not even have their own schools, I must say I am somewhat flabbergasted by the tone of your presentation and, I think, by the substance.

I honestly fail to understand how the depth of your indignation is supported by the logic of your presentation. There are many, many points in your statement that I would raise questions about, but one in particular—the pages are not numbered, but I guess it is on the back of the second page—is point 2, and this is a theme, I think, that you revert back to quite frequently.

You say that French-speaking persons would be respected. You want a bill "whereby French-speaking persons would be respected as equal partners and mechanisms would be offered them for complete, true and efficient governance of their education, with sufficient financial resources to satisfy the decision of the Ontario Court of Appeal."

I honestly do not see how the bill—I have studied the bill very carefully. I have discussed it with my wife, Elizabeth Lachappelle, with many friends, many educators. Also, there is another idea. When a bill is formulated, I do not think anyone ever presumes that that initial formulation is the final, ultimate one, but rather there is bound to be an evolution over a period of time in the light of experience, whereby a kind of fine-tuning and refining is under way.

I am not sure if this is a question, but it is an observation. I honestly fail to see the reasons for the degree of concern that you express.

Ms. Labrosse: Thank you. I will speak in the language of Shakespeare to make my point very clear, Mr. McGuinty. I, too, have worked very hard during long years, a total of 12 years in education, not as an elected representative, but as a parent, a francophone parent, very much involved.

I was the parent founder of the first French public elementary school in Carleton. I must remind you that I represent francophone ratepayers who right now are benefiting on an equal basis with anglophone public ratepayers from access to commercial and industrial taxes. The financing proposed in the legislation takes away some of these privileges, as some call them. I call them rights, right now that I have on an equal basis with anglophones.

What you are offering me is financing as is being received right now the separate boards, and that is unacceptable. It was unacceptable to me five years ago when I set up the French elementary public school. You are in fact asking me to go backwards and not forwards, if that answers your question.

Mr. McGuinty: Have we not been assured of interim grants, interim support?

Ms. Labrosse: Not in the legislation. A grant, to me, is like living on welfare. You have to understand that the residential assessment base for the public sector will be very small. We have calculated 10 per cent—to be generous, maybe 15 per cent—so we will be living 85 per cent to 90 per cent on grants. Grants are there. I am sure the government will meet its political promises the first year, but there is no long-term guarantee.

We will have the choice either to raise taxes or to cut services. If I raise taxes, I am going to lose my ratepayers. If I cut services, I am going to lose my students. I am in a real bind.

M. Allen: Merci. Je vais essayer de parler la langue de Molière, si vous voulez.

Mme Labrosse: Merci.

M. Allen: Il est possible de maintenir le point de vue de votre mémoire. Il est vrai que le financement des écoles séparées n'est pas au niveau de celui des écoles publiques. C'est la même chose partout en Ontario, n'est-ce pas?

Mme Labrosse: Oui.

M. Allen: Je comprends totalement votre problème. Nous, à la Législature, nous avons milité auprès du gouvernement, année après année, pour un plus grand partage du financement des écoles partout en Ontario. C'est un problème à long terme, mais je pense que si nous attendons qu'on résolve les problèmes du financement des écoles en Ontario, c'est vraiment à long terme, et j'ai donc peur que, à l'avenir, l'instauration d'un conseil scolaire ici ou à d'autres endroits en Ontario devienne peut-être impossible. Comme vous le savez, l'ancien gouvernement a eu des difficultés avec la réforme des impôts commerciaux et industriels, le partage des impôts communs dans ce dossier; c'est un projet très difficile. Donc, de ce point de vue, c'est un aspect très pessimiste que vous nous signalez cet après-midi.

Il est impossible, je pense, d'assurer dès maintenant un mécanisme de financement précis et exact à long terme, sans une telle réforme au complet du financement de l'éducation. Donc, vous aurez un problème, je pense, si vous demandez un tel mécanisme à cet instant, n'est-ce pas?

Mme Labrosse: Si je comprends bien, Monsieur Allen, vous vous inquiétez, pour nous, de ce que si le gouvernement ne va pas de l'avant avec la mise sur pied du conseil de langue française maintenant, l'idée du conseil de langue française soit perdue à tout jamais; vous avez peur de ça. Mais moi, je vous dis que je n'ai pas peur puisque si j'avais peur, je ne serais pas ici devant vous aujourd'hui pour vous dire non, merci, au projet de loi. Alors, j'ai beaucoup plus d'optimisme et de croyance dans la détermination des francophones.

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Je dois vous dire que, présentement, nous avons des mesures de gestion qui se retrouvent dans la Loi 75 et, pour l'instant, jusqu'à ce que le gouvernement se prononce, justement, sur le financement des écoles secondaires et élémentaires, nous préférons rester, avec la Loi 75, au sein du Conseil d'éducation de Carleton, tout près des anglophones, puisque nous bénéficions à part égale présentement de ce dont les anglophones bénéficient.

Alors, je n'ai pas peur comme vous, je n'ai pas peur que l'idée du conseil de langue française soit perdue à tout jamais; ce n'est pas ce que je vous demande. Je vous demande de retarder le projet de loi. Vous pourriez soit le retarder ou l'adopter et retarder sa mise en application jusqu'à ce que le gouvernement se décide sur la question du financement. Ce serait une approche possible, mais je ne suis certainement pas contre et je n'ai pas peur.

M. Allen: Merci.

M. le Président: Y a-t-il d'autres questions? Non? Dans ce cas, je vous remercie encore une fois, Madame Labrosse, et vos collègues. Merci beaucoup.

Mme Labrosse: Cela m'a fait plaisir. Merci bien.

Mr. Chairman: The next delegation represents the Parent Trustee Advisory Committee of the Ottawa Separate School Board, the English sector. Would they come forward, please?

Might I ask you if we have a written presentation from you?

Mrs. Ablett: Yes, we do. If it is all right with the committee, we would like to distribute it following our presentation.

Mr. Chairman: My only concern is for the translators.

Mrs. Ablett: We have given them a copy.

Mr. Chairman: You have done that? Thank you very much. If you would perhaps each state your name slowly into the microphone for the benefit of Hansard and the translators, we would be grateful.

PARENT TRUSTEE ADVISORY COMMITTEE (ENGLISH SECTOR)
OTTAWA ROMAN CATHOLIC SEPARATE SCHOOL BOARD

Mr. Sutcliffe: My name is John Sutcliffe, and I am a member of the Parent Trustee Advisory Committee.

Mrs. Ablett: My name is Kathy Ablett, and I am chairman of the Parent Trustee Advisory Committee at our board, English sector.

Mr. Dalton: My name is Frank Dalton. I am a member of the Parent Trustee Advisory Committee.

Mr. Dole: My name is Paul Dole, and I am a member of the Parent Trustee-Advisory Committee.

Mr. Campbell: Mr. Chairman, before they proceed, I would like to bring up a point of order: I realize why you do not hand out the thing, because you are reading it as you are going along, but with only half an hour, it helps us to formulate questions. To save time, I am wondering if they could present us with a written brief ahead of time so that we can follow. Given the half hour, I do not know that I would be fair to you in asking any questions I might have. Would that be appropriate, Mr. Chairman?

Mr. Chairman: By the way, is it "Mrs." Ablett?

Mrs. Ablett: That is correct.

Mr. Chairman: Mrs. Ablett, if you would begin, I would be grateful.

Mrs. Ablett: The Parent Trustee Advisory Committee, the English sector, consists of two elected parents from each of the Ottawa Roman Catholic Separate School Boards's 28 English schools, one representative from the Federation of Catholic Parent-Teacher Associations of Ontario and five appointed trustees of our board.

The elected parents are nominated and confirmed at the beginning of every school year. It is an active committee, and parents form the constant and direct liaison between the 28 parent advisory councils and PTAs and the trustees.

PTAC, a shortened version of our name, discusses issues of concern to parents across the system and, by way of motion, brings these matters to the attention of trustees, either at the majority language group or to the full board.

As can be easily confirmed, PTAC has been responsible for many initiatives as well as many examinations of trustee decisions which have led to policy reversals and, indeed, the establishment of new policies more in keeping with what the parents, ratepayers and students desire.

Mr. Chairman, I shall read the preamble and I invite you to stop me at any time for questions.

The impact of the proposed French-language school board has been a constant discussion point with PTAC over the past nine months. PTAC has convened meetings with our English trustees; the French trustees; Jean Comtois, regional director of education and chairman of the planning committee as well as chairman of the impact committee; and with members of provincial parliament. PTAC has also communicated with the Minister of Education (Mr. Ward) outlining PTAC concerns

On behalf of PTAC and the parents of some 10,000 children we directly represent, may I thank you for this chance to put before you our concerns regarding Bill 109.

PTAC looks forward to the final passage of this legislation and our proposed amendments, which are embedded in the principle that there is a need to ensure fair and equitable treatment for both the English and the French sectors. It is a common enough tag to say that justice not only must be done, but must also be seen to be done, and in this matter we urge you to the view that fairness, equity and justice must be seen to be done to both the English and the French sectors.

PTAC concerns are as follows: focus of legislation; financing of the French-language school board; the critical time line; the appeal process; the constitutional aspect of the legislation; the definition of "fair and equitable"; and the Languages of Instruction Commission of Ontario. There is an appendix A, a proposed fair and just model.

1. Focus of the legislation: PTAC supports the formation of the French-language school board. PTAC notes that, as the legislation is written, the focus is very clearly on the rights and needs of a French-language board with an apparent lack of similar concern for the remaining English school boards.

PTAC urges the standing committee on social development to acknowledge the unique nature of the Ottawa Roman Catholic Separate School Board, namely, that 36 per cent of our students are in French schools; that ORCSSB boundaries include the city of Vanier with its approximately 63 per cent French-speaking population; and that a large number of ORCSSB support staff would be designated staff under the legislation and thus would move to the French-language school board.

Our board of trustees is composed of an equal number of French and English trustees, currently eight French and eight English. It will be seen very clearly that this contrasts with other boards in the Ottawa-Carleton municipality that have significantly lower ratios of French-speaking students. The Ottawa Board of Education has 12 per cent, the Carleton Board of Education 6.7 per cent and the Carleton Roman Catholic Separate School Board 28 per cent.

It is reasonable to assume there will be a loss of nonteaching professional staff, administration support staff and centralized service staff. This will have a detrimental effect on the English Catholic board, as it will clearly increase its difficulties in maintaining programs and special services.

Given the very tight and condensed time frame, it might be presumed that difficulties will arise in hiring qualified, experienced replacements while the new board attempts to address the unknown, and that is the needs of the proposed French-language school board.

Recommendation: PTAC recommends that the legislation providing for the formation of the French-language school board in the region of Ottawa-Carleton ensure the rights of the existing boards in the preamble. PTAC recommends that the needs of the French-language school board be specified now before the legislation comes into effect. PTAC suggests that, as a matter of prudence, your committee assess the needs of the French-language school board, give serious consideration to the impact on existing boards and weigh the French-language school board's ability to maintain viability and effectiveness.

PTAC notes that subsection 62(6), the clause dealing with the need for a double majority, appears to recognize the rights of the majority and minority situations. PTAC unanimously supports the retention of this important clause in the final drafting of the amendments to this proposed legislation.

2. Financing the French-language school board: PTAC submits that parents and ratepayers are concerned with the education of our children today and in the future. It is a truism that this is a shared concern of parents and ratepayers, since it is in the national interest that today's children and tomorrow's children receive the very best education.

PTAC's common statement makes clear the fact that we must ensure that facilities, staff and administrative support exist so as to deliver the best educational programs in the best possible environment.

It is a matter of record that there are English schools in our board which do not meet our board's basic standards as far as facilities are concerned.

PTAC believes that contributions to a new French-language school board are based, or should be based, on the financial status of all existing boards. PTAC is concerned that a disproportionate amount of the board's funds are being considered for disbursement without a rigorous study to disclose the existing and future needs of the English Catholic population.

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PTAC is concerned, as parents and ratepayers, that the Ministry of Education has not stated what the ministry's contribution will be to the French-language school board. PTAC is concerned that the needs of the French-language school board have not been publicly addressed in order to justify the as yet unknown requirements of the transfer of assets and personnel. Parents and ratepayers have expressed to PTAC their concern about the impact on the tax rate following a division of taxes based upon linguistic lines. Parents and taxpayers have expressed to PTAC their concern that, above all, a high standard of education must be maintained and must not decline in any way as a result of the formation of the French-language school board.

Recommendations: PTAC recommends that the legislation clearly specify that debts be transferred as well as corresponding assets. PTAC repeats that debts be transferred as well as corresponding assets.

PTAC recommends that the legislation provide for compensation to existing boards similar to that found in Bill 30. This would allow for adjustment to the loss of students and the one-time costs incurred due directly to the establishment of this new board.

PTAC recommends that the legislation reflect points raised in the Macdonald commission report, specifically the recommendation dealing with the pooling of the commercial tax base that would allow for equal access to educational financial resources.

PTAC commends to your committee the recommendations of the Macdonald commission as a workable, fair and reasonable answer to the funding problems experienced by many boards.

PTAC recommends that your committee take careful note of the public and known reality of our board's reserve funds. This surplus is substantial and possibly the highest per capita in Ontario. The disbursement of these funds will be the subject of keen parent-ratepayer observation and review. PTAC urges your committee to ensure that proper legislation is enacted which will allow for an appropriate disbursement based on prudence and justice and which takes into account the board's debts, including any unfunded liability, and which is capable of public review while ensuring the absence of ill feeling.

3. The critical time line: PTAC advises that the implementation schedule outlined in Bill 109 is unrealistic in its demands, unfair in its scope and potentially divisive in its application. Any proposed schedule must provide adequate time in order that the following activities be accomplished without let, hindrance or delay:

A. As a matter of fairness, a needs assessment of the French-language school board must be accomplished before any division of assets and personnel is considered.

B. There must be a review of enumeration data and, as PTAC understands it, such data will not be available until July 1988.

C. Fair and reasonable negotiations on the division of assets and personnel cannot be commenced until A and B are available.

D. PTAC notes that the time frame given is the time when, in the ordinary course of events, parents, trustees and school board officials are on vacation. PTAC advises that this is an extremely important matter with serious implications for our children, as well as the effectiveness of the school system. Accordingly, PTAC advises that more time should be provided so as to evaluate and assess the proposals and their impact on the education of our children.

Recommendations: PTAC recommends a needs assessment be done relative to the French-language school board.

PTAC recommends the August 31, 1988, deadline be moved to September 30, 1988.

PTAC recommends that any decisions reached before April 30, 1988, on subsection 62(4), affecting the division of assets and personnel, must not be taken into consideration in the final distribution of assets and personnel, since the needs of the French-language school board have not yet been defined and presented. PTAC draws the committee's attention to at least two controversial and presumably ultra vires motions of the full board which have the effect of transferring moneys to the French board prior to the enactment of the legislation and which, in the view of PTAC, are against the spirit of the proposed legislation. PTAC invites the committee to declare these motions here and now to be ultra vires and to be without force.

4. Appeal process: We note subsection 54(2) relates to an agreement between English and French boards, and when the time allowed for an agreement has passed, the French-language school board seems to have sole authority to request the commission to resolve such agreements.

Subsection 62(7) relates to the definition of assets, etc., under the time line of August 31, 1988. We have already stated our concern as to the unreasonableness and arbitrariness of this time line.

The PTAC advises that both these articles are unsatisfactory and deserve to be amended. PTAC advises it would be regrettable were there to be a suggestion of bias or an appearance of bias in the legislation, which at this stage appears to be captured by the view that the problems are in the French sector as a minority and not in the majority-language group.

PTAC reminds the committee that the Ottawa Roman Catholic Separate School Board is unique in that trustee representation is disproportionate to student numbers. Put bluntly, PTAC advises the committee that eight English trustees represent 64 per cent of the student body and eight French trustees represent 36 per cent, the French student body. PTAC cautiously draws the attention of the committee to the fact that the legislation as it is drafted provides for the possibility that the French-language Education Council might avoid negotiating in good faith in order to secure a mediated settlement. PTAC's view here is that such a contingency would be regrettable and that the legislation must be drafted to avoid such contingency.

Recommendation: PTAC recommends that the legislation provide equal access for all parties for the resolution of disputes. PTAC further recommends that all parties, including those that could be indirectly affected be informed of any disputes so as to ensure that all impact areas are identified, appreciated and resolved.

Constitutional aspect: It is a matter of history that Ontario children, schools and school boards of Roman Catholic ratepayers have been kept legally separate from those of the public ratepayer. PTAC views with some concern the creation of an umbrella French-language school board which will include Roman Catholics and other ratepayers despite the provision for separate sections of the board. Since such action may be presumed to be creating a legal precedent capable of being used in the future to undermine the distinct nature of the Roman Catholic separate school system, PTAC has looked into this problem with many parents and there is no question that the possibility of a precedent for future actions concern Catholic parents. The trustees are well aware of parents' concern.

The recommendation is that PTAC urge that the potential precedent be neither established nor created and that the legislation be amended to provide for the establishment of Roman Catholic French schools under the nomenclature of the Roman Catholic French-language school board.

Definition of fair and equitable: PTAC realizes there will be requirements from all school boards to assist in the establishment of the French-language school board. PTAC poses the question: What is fair and what is equitable to all parties? PTAC reminds the committee of the old equitable maxim, "He who wishes for equity must approach with clean hands." PTAC is also conscious that concepts of equity vary. Indeed, PTAC is aware of the other much-quoted maxim that, "Equity varies with the length of the Lord Chancellor's toe." PTAC urges the committee to take as first principle the fact that the students of today's population are the current, morally entitled shareholders of the Ottawa Roman Catholic School Board. We may fairly assume that the needs of yesterday's students have been addressed.

PTAC submits that today's students have a prior right to a just and equitable education for their own sake, for the sake of the education foundation, for the future and for the sake of the national interest.

Therefore, the recommendation is that PTAC draws the committee's attention to all of the recommendations in this summary under the heading "Financing of the French-Language School Board."

PTAC advises that these are the recommendations which must be addressed by your committee as it examines the critical issues of fairness and equity and the ratepayers' entitlement to fairness and equity.

The Languages of Instruction Commission of Ontario: As is well known, the Languages of Instruction Commission of Ontario promotes and protects in a vital way the interests of minority-language groups. We commend its dedication. PTAC draws the committee's attention to the composition of the languages of instruction commission and points to the very reasonable presumption by parents and ratepayers that this is an inappropriate body for dealing with disputes, the more so since the legislation does not appear to envisage a process of appeals from the decision of arbitrators, especially where the chairman is appointed by the languages of instruction commission. Parents and ratepayers must have the expectation of justice and the right to appeal to an impartial and nonaligned body.

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PTAC recommends that the legislation draw upon the precedent of Bill 30, which gives an outside and obviously impartial body the right to review decisions. PTAC's view is that it is demonstrably bad in practice and in law, that anybody—in this case the languages of instruction commission—should be placed in the apparently anomalous position of being able to appoint a mediator and a chairman of the arbitration board where the relevant parties to the arbitration are estopped from prosecuting an appeal as would usually be provided within the minimum guarantees of administrative law and procedures which effect to be just.

PTAC urges your committee to draft an amendment which would permit appeal, either to the judicial system or to the Minister of Education. PTAC makes this observation with caution. PTAC is expressing the known views of parents and ratepayers. The trustees are aware of these views.

PTAC reminds your committee that Jean Comtois, regional director, has met two parent groups under PTAC auspices and he is aware of the degree of concern parents feel about this matter. The director of education, Pierre Xatrush, is also aware of the depth of parents' feelings on this issue.

On behalf of PTAC, may I thank you for the care and consideration you are giving to this vital and important proposed legislation? Tonight I shall be reporting back at the Ottawa Roman Catholic Separate School Board offices to the assembled delegates of the 28 schools who compose the PTAC forum, whose delegates, through their schools, parents advisory committees and parent-teacher associations represent the 66 per cent of the ORCSSB's pupils and the overwhelming majority of parents and ratepayers.

PTAC has followed your committee's work with keen interest and has continued over the weeks and months to discuss the issues surrounding the proposed legislation. Your task is not an easy one. PTAC stands available to attend any future meetings and have individual representations from all of the English schools within the ORCSSB in any place in Ontario.

PTAC believes it presents a common and united front. Your job and PTAC's job—and may we hope the eventual impact of the legislation—is to provide a matrix for excellence in education for our children, be it the public board or separate board, French or English, within the vision we all share that our children deserve the very best and that our own deliberations should be seen to be just, fair and equitable. This is our challenge. It is your challenge. Let right be done.

You will see appendix A. At the special PTAC meeting convened at the school board's offices on Monday, May 21, the following proposal was put to the assembled trustees as the appropriate model for the disbursement of assets. The trustees are aware of parent interest and support of this model.

PTAC recommends that your committee examine and approve this model as the appropriate one and embed such model into the proposed legislation.

1. Taking January 31, 1988, as the cutoff point, assign those schools which were being operated at that date by the majority language group and the French-language education council, respectively, to the existing board of the French-language school board.

2. Evaluate all remaining assets.

3. Assess all debts, including unfunded liabilities and the cost of upgrading operational schools in both sectors to agreed ORCSSB standards.

4. Establish net assets by deducting item 3 from item 2.

5. Divide net assets in accordance with the ratio of ratepayer enrolment, French to English, as of January 31, 1988.

It is submitted that this model provides the common-sense model of fairness to all parents, students and ratepayers who are ultimately the beneficiaries of the system, because it is a fair model, it is a nonconfrontational solution and it deserves to be adopted.

I ask for leave to add appendix B. I have only one copy and I will certainly submit it to you immediately I finish reading it.

I have just had an opportunity, before coming here this afternoon, to read some of the submissions given a few hours ago at 10:30 a.m. by the chairman of the majority-language group, Bonnie Kehoe. Unfortunately, PTAC was unable to be present at her presentation and we were unable to receive an advance copy of the MLG presentation.

I have discussed the points raised by trustee Kehoe with some of the parents and our initial response is that we support the positions taken by the chairman of the majority-language group, trustee Bonnie Kehoe. Clearly PTAC would like to refer trustee Kehoe's submissions to the members of PTAC who are meeting this evening at the ORCSSB, but we are confident trustee Kehoe's submission accords with PTAC's views, at least in general terms.

Mrs. O'Neill: If I may go to section 3, critical time line, you are talking there about two motions you invite the committee to declare invalid or ultra vires. Could you tell me the general content of those motions? I think in the end it would be helpful if you could submit those motions to this committee, but maybe you could just give us a brief outline of what they are.

Mrs. Ablett: Certainly, Mrs. O'Neill. Recently at our board, there have been needs identified, for example, in the English sector, and they have been identified by the majority-language group, for the expenditure of fairly large sums of money. They deal with upgrading facilities in the south end of the city, which requires an expansion at St. Patrick High School. The other deals with the upgrading of a facility from an elementary school to become an intermediate facility. Again, a large amount of money was required by the MLG to undertake this.

The full board made the decision to expend the funds, with a provision—and I guess as parents we look on it as a deal—"We will allow you to spend this money, providing you give us a percentage that reflects our enrolment."

Our concern is that there were no needs identified by the French sector of our board that said it needed to have any money. In fact, we feel, as our document states, that we are not aware of the needs and, therefore, those motions should not proceed.

Mrs. O'Neill: If we go to appendix A for a moment then, if I may have two other short questions, you say here, "divide net assets in accordance with the ratio of ratepayer enrolment." Do you mean enumeration?

Mrs. Ablett: Or enumeration. I guess ratepayer, yes, would —

Mrs. O'Neill: Ratepayer enumeration is what you are talking about there?

Mrs. Ablett: Yes.

Mrs. O'Neill: When you talk in point 3 of "agreed Ottawa Roman Catholic Separate School Board standards," is that agreed by the full board, Has that been developed over a period of time? What are you talking about there?

Mrs. Ablett: It is the full board.

Mrs. O'Neill: Do you have this in a policy manual or how do you have—

Mrs. Ablett: Yes. There is a printout of the board's standard policies for a basic facility.

Mrs. O'Neill: It may be helpful for us to have that document, as well as the two motions, if you could send those to us through Mr. Adams, our chairman.

Mrs. Ablett: Certainly.

Mr. Campbell: I think we dealt this morning with the trustee group on the surplus and assets and debt, so I am not going to spend a lot of time on it, save to say that if you were to draw a line and say it was 35 per cent or 34 per cent or somewhere in that vicinity, on a short term, do you sense that it is higher or lower than that? Take that figure as a given that probably 35 per cent of the assets, debts and everything else would be transferred to this new board. Do you have a sense it is 50 per cent or 70 per cent or something? Is that your concern? I have heard it twice now, and I just do not see where your concern is coming from. Maybe it is because of a lack of understanding, and I want to try to see if I can understand the question.

Mrs. Ablett: I think that what has been talked about to us on several occasions is this idea that we did not allude to in our document for a particular reason, but it is this historical contribution. I think we clearly outline in our document that it is the kids who are there today and the kids who will be there in the future whose needs need to be addressed. You should not be identifying kids who have gone through the system in the past and base your financial reimbursements on those figures.

Mr. Campbell: OK. If I were to say that the assessment figure comes down at the end of July and it says it is 35 per cent, and therefore 35 per cent of the assets are transferred, is that your understanding? I am talking in today's figures, as it stands now.

Mrs. Ablett: I think it would certainly have to be reviewed, and that would seem to be more reasonable at that time.

Mr. Campbell: Then you are suggesting there is another figure here that we do not know about. I do not have the assessment of information in front of me, and I know I am talking in raw figures, but approximates being there, what I understand this legislation to say is that at some point in time there would be a division of assets, stats and everything else, on a ratio given the assessment. If the assessment was thus and so, is it your understanding that a different method is being used to what is proposed?

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Ms. Ablett: I guess, and I hope I respond to your question correctly, the other way that we would appreciate it being looked at, if it is not the enumeration, is that you look at the actual per pupil ratio which would be sitting in that new board, coming from our board.

Mr. Campbell: OK. Let me deal with item 3, the critical time line. Let me point out as well that we do not have the power to declare anything ultra vires in this committee. We can only recommend. We can amend legislation, but we cannot declare anything ultra vires at this committee stage. I just point that out so there is no misunderstanding.

Dealing with the critical time line, if you were looking at a scenario tomorrow which said you needed X amount of time, how much time would you be looking at? If you were to start tomorrow and you had everything, all the

information you needed, which you are going to get in July, August or whatever it is, how much time do you figure you would need to make all the transfers, deal with all the personnel and do all the work?

Ms. Ablett: As parents, we hope our board would look after all of that.

Mr. Campbell: Yes, obviously.

Ms. Ablett: But I think we are saying that to assess the impact, as parents, of which programs and things like that might come into some problem or difficulties, then we have suggested an additional month is all that is required, from the time line that the legislation already proposes.

Mr. Campbell: Again, this has been raised about summer vacations and things that are brought up in the summertime. I get concerned about the perception of holidays getting in the way of actual setting of priorities and working out things that should be worked out for the benefit of kids. I guess that is where my concern is coming from. I did not state it as nicely this morning perhaps.

Ms. Ablett: I think, for example, if anyone were to be concerned about holidays getting in the way, if this past weekend was any example as far as parents were concerned, our holiday will start after this hearing finishes for us, because we certainly worked. We have worked over many months, but this past weekend, being a holiday weekend, was no holiday. I can assure you that parents I know who have worked on this will be watching it very closely all summer long.

Mr. Campbell: I am sorry. I did not mean to deal with parents. Obviously, that is a concern, but I was talking about staff. I guess that is the way I read it. Perhaps with this morning colouring what I was reading in your brief, I had understood you to say that trustees and school board officials are on vacation. I did not feel you were excluding just parents and you were alluding to that. Just for clarification.

I guess item 5, and this is my last one, is the constitutional situation. I am not a lawyer and I do not know if any of you are, but I guess constitutional lawyers make their money in dealing with these kinds of questions. I do not mean to trivialize it in any way, shape or form, but I expect there are precedents started already with Bill 30 in other parts of the province which have dealt with this question and with the transfer of school funds from the public sector to the private sector beyond grade 10. Those seem to have been sort of carried through reasonably well. It seems that the boards are receiving the moneys past grade 10.

There were all kinds of constitutional challenges that were being proposed. I am just concerned that something like this might get in the way of actually dealing with some legislation. I guess that is the analogy I draw because it is so recent.

Ms. Ablett: I think my colleague to my left here has written a little note and said that we are aware of no umbrella boards having been created. At this time, we are not aware that—

Mr. Campbell: From that point, I appreciate that. Thank you very much for your presentation.

Mr. Chairman: Mrs. Ablett, I thank you and your colleagues very much for a very clear presentation. I thank you, too, for keeping to your time, and we congratulate you on your initiative of producing the timely appendix B since this morning. Thank you very much indeed.

Ms. Ablett: Thank you.

Mr. Chairman: Our next group is the Ontario English Catholic Teachers' Association, the Ottawa unit. While they are coming forward, I would like to say to the committee that it is my understanding that Gilles Marleau, who was due to be here at five o'clock, is in fact here. I propose that we go straight on and at 3:30 p.m. we will hear from Mr. Marleau. Is that acceptable? Again, I point out that you have half an hour, including the questions. Before you begin, if each of you would speak into one of the mikes clearly so that the translators and Hansard know exactly who you are, I would be grateful.

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

Ms. Charland: I am Rhena Charland and I am president of the Ottawa unit of the Ontario English Catholic Teachers' Association.

Ms. Tobin: I am Carol Ann Tobin, a member of the executive of the Ontario English Catholic Teachers' Association, Ottawa unit.

Mr. Howard: My name is Paul Howard. I am with the provincial office of the Ontario English Catholic Teachers' Association, executive assistant, and assigned to cover Queen's Park as well.

Ms. Charland: The Ottawa unit of the Ontario English Catholic Teachers' Association welcomes the opportunity to respond to the proposed legislation to establish the French language school board for Ottawa-Carleton. The Ottawa unit of the Ontario English Catholic Teachers' Association represents approximately 600 English Catholic elementary and secondary teachers.

We commend the government for its creation of a new entity, the French-language school board, which will realize the legitimate and long-standing aspirations of the French-speaking community. The government is also to be commended for incorporating this consultative process that provides an opportunity for dialogue.

As representatives of the Ontario English Catholic teachers presently employed in the existing Ottawa Roman Catholic Separate School Board, we must address the following concerns, which we perceive as directly affecting our members in Ottawa upon passage of the bill.

First, while completely in support of the realization of a French-language school board, the proposed model of the French-language school board as would be established by the suggested legislation is unacceptable to the Ottawa Catholic teachers as the model for the delivery of Catholic education. The foundations of our Catholic separate school system is our Roman Catholic faith. Our right to this system, involving complete control over our schools, is enshrined in section 93 of the British North America Act, guaranteed as recently as June 25, 1987, in the unanimous decision of the seven justices of the Supreme Court of Canada.

Our opposition to the model of an umbrella board rests in the threat to the complete autonomy of the Catholic separate school system. This autonomy is threatened by a number of measures proposed in the legislation. The legislation proposes that trustees representing different philosophies of education will be brought together at the same table to take decisions on behalf of the full board in areas that are identified as its exclusive jurisdiction.

The philosophies of a Catholic sector and a public sector will, of necessity, have different foci. Thus, decision-making by the full board in its areas of exclusive jurisdiction build in the potential for conflict based on religious grounds. We are totally opposed to any legislation which sets up conflict in its premises and structures.

The mechanism for dispute resolution proposed in part XI of the legislation does not resolve this fundamental flaw. The processes would be overly time-consuming, causing undue interruption to the delivery of education to students.

Second, we are concerned that if this model of an umbrella board is adopted for the French-language school board of Ottawa-Carleton, it would establish a precedent for the remaining boards, which we perceive as an unacceptable structure for the delivery of Catholic education.

Finally, subsection 73(3) of the proposed legislation provides for proportional responsibility of the French-language school board and the remaining board for payment of gratuities. The service gratuity in effect in the Ottawa Roman Catholic Separate School Board is an unfunded liability. We would be happy to explore that and expand upon it further in question period. No funds have been set aside to cover its payments to all its teachers.

As the tax base, which will serve to fund the liability for the transferred teachers, will be moving to the French-language board with them, it seems only reasonable to the Ottawa English Catholic teachers that the liability should also become the responsibility of the French-language school board and not be maintained as an additional tax burden on the reduced number of ratepayers of the remaining board. The delivery of programs, the maintenance of facilities and, in essence, the quality of education would be compromised by this imposition.

The principle of equity has already been well established under subsection 61(5) dealing with property debts; they will be paid. To be consistent, debts related to personnel should be resolved following the same principle. Since the service gratuity is an unfunded liability, with no money set aside to pay this debt, the solution should be found in each board accepting to pay the gratuity from the funds generated by the tax base supporting it. However, since the Minister of Education has already recognized that there may be need for initial payment of startup moneys for the new board until it fully develops its assessment base, the amended legislation could consider allocation of some of these grants to defray the cost of payment of the personnel debts.

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The issues that the legislation address are complicated in nature and require sensitive resolution. The Ottawa English Catholic Teachers' Association is concerned that the structures it has depended upon for

delivering Catholic education to our students for well over a century may be dismantled by an administrative model that may impact on other boards that may experience amalgamation.

We support the formation of the French-language school board for Ottawa-Carleton, but at the same time, we must insist that any potential negative impact for the English Catholic community must be addressed in the legislation. We count on our legislators to revise the proposed legislation and to be sensitive to the needs of both official language groups.

I am conscious of the time and effort required of your committee to accomplish its mandate and I therefore express, on behalf of the Ottawa English Catholic Teachers' Association, sincere appreciation to each of you.

Mr. Chairman: Ms. Charland, thank you very much. I have Mr. Jackson, Mrs. O'Neill and Mr. Allen.

Mr. Jackson: Ms. Charland, I have two questions, or at least two to start with, in the areas of the retirement gratuity. Has your board ever considered funding a retirement gratuity?

Ms. Charland: I think that would be information the teachers might not be privy to.

Mr. Jackson: It is usually done in open board. However, things may vary. I tried for 10 years to get my board to fund the unfunded nature of the retirement gratuity. It was a major concern in my board. We were looking at \$1 million payouts before the end of the century and that is cause for alarm. I know this has bargaining implications; however, I really should ask it. Instead of tying the provincial incentive or startup funding to cover some of these costs, would you not consider as well the legislation creating the need within the board to fund a retirement gratuity plan?

Ms. Charland: I will ask my person whose strength is in that field to complement or add to my answer, but my reaction would be that we are talking about such a very large number of teachers that it would be very unrealistic, at this stage of the game, to fund it now. We are talking about a very large percentage of teachers who would be moving over; so the amount of money you are discussing would be a very large amount.

Mr. Jackson: I appreciate that, but despite the fact that it is a large amount of money, it is not going to go away. The prospects of the government providing substantive dollars for that, I find hard to imagine. I am trying to get more of a sense from you, if a solution might lie with it become a prerequisite to establish a fund in these areas. The raging debate for years, as you know, is as soon as you fund, it it becomes entrenched, and trustees hope against hope they will either cap or eliminate the retirement gratuity. Those are the facts. I just wonder if that is an area which has been discussed by your confederation or not.

Ms. Charland: I think we would encourage funded liability and we have encouraged it. We also understand that an unfunded liability may be OK in situations where there is a tax base that can support the number of people who are going to be funded. But when you greatly disrupt that ratio, that is when we see that there is just an impossible imposition left on the people who are left behind to pay.

Mr. Jackson: In the event that we look at some adjusted assesment models as a function of this bill, I wanted to have on the record somehow tying the unfunded nature of the gratuity to it.

My second question is on the question you have raised about the constitutionality of the umbrella concept. Have you at any time, informally or formally, received from the minister or any representative of the ministry a legal opinion as to the answer to that question?

Ms. Charland: No. Actually, we thought perhaps you people had information for us on why we should accept the legality of this; perhaps you had access to opinions that we did not about the constitutionality and why this should be accepted as a model that is constitutional.

Mr. Jackson: It is my intention to approach the social development committee to ask if we can prevail upon the Attorney General (Mr. Scott) to attend one of our meetings to clarify this issue for us. As he eloquently debated all elements of Catholic education rights in this province in the Supreme Court, I find it unusual that he has so far been silent on this issue. I will be formally requesting of the committee that we ask him to attend and to respond directly to these issues so that the air is cleared once and for all on that.

You have received no informal or formal clues from the government? I know you have your own legal opinions, which you have generated internally from your association.

Ms. Charland: Yes.

Mr. Jackson: But none whatsoever at this point?

Mr. Howard: No. I understand that the Attorney General's office or through the legal advisers of the ministry, obviously, there have been some opinions rendered, but no, officially or unofficially, the association has not received them.

Mr. Jackson: Have you ever requested them?

Mr. Howard: No, we have not. It might be a good idea on our part as well.

Mr. Chairman: I would be glad to write such a letter to the Attorney General on behalf of the committee asking about the constitutionality of the umbrella concept, as I understand it.

Mr. Jackson: I would like to put that in the form of a motion, if I may, but I was going to wait until the end of the session today.

Mr. Chairman: Very good.

Mrs. O'Neill: I may just say, and I think you would appreciate, that the complexity of this bill has involved four ministries up front, the Ministry of the Attorney General being one, the Ministry of Revenue being another, the Ministry of Municipal Affairs another and, of course, the Ministry of Education. These interministerial meetings have certainly been very much a part of the preparation of this bill, and I would not want you to think otherwise.

I have some questions about folio 2 at the bottom of the last paragraph. Could you possibly relate that to clauses of the legislation? I felt that was one goal we had achieved, where you would not be having the two sectors taking decisions on those that are exclusive jurisdictions. I would like you to point to clauses in the bill where you feel this is happening. Is this a perspective you have or a fear, or is there actual support in the document in the form of clauses that you are fearful of?

Ms. Charland: I think it is both. Number one, we have spent many years saying that our philosophy of Catholic education does not have areas of exclusive jurisdiction. It is a philosophy that permeates all our decision-making. With that said, anything that would come to a joint decision-making situation would cause us consternation, because it would seem to threaten that autonomy.

For example, even in the maintenance of buildings and facilities, when we get down to the nitty-gritty of it, we would have a number of facilities in Ottawa, for example, if this model—we are discussing this model and how this model presents problems—in our position, we have buildings that perhaps did not have a gym. Other buildings in the public sector would. In Ottawa, we have two secondary schools waiting for satisfactory facilities. If we were discussing these as common decision-making areas, I think there might be areas for concern there.

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We are concerned about such things as that a superintendent could work for both sectors. We are concerned that areas of jurisdiction of the full board might deal with collective agreements of employees. The Catholic sector's philosophy should certainly show up in those areas, and if these were joint decision-making, we would have some concerns with that.

Mrs. O'Neill: Are you suggesting that there are only three areas of exclusive joint jurisdiction here, but you are concerned that there may be a double majority vote to make other things joint decision-making?

Ms. Charland: Yes, such as professional development of employees. That again would be another area that would have a different focus for the Catholic sector and the public sector.

Mr. Allen: I must say I find this brief somewhat distressing. The French community in Ontario has, as I understand it, sought extensive legal judgement with respect to the constitutionality of this notion. There are, as I understand it, at least five or six legal judgements that they have sought, and only one of them raises some questions about constitutionality. The others are all solidly behind the acceptability of this as a concept under our Constitution.

I guess it is not that which I find such a matter of concern. Under Bill 30, in which I, among other legislators in this province, sought to secure the extension of funding for the secondary system for the Catholic community, I heard no objection from the school boards when we put in place joint board committees to enable coterminous boards to work together on specific projects.

I know that as a committee we visited places like northwestern Ontario, where their public and separate boards in fact sponsor and build joint schools to house their complete programs. I know coterminous boards like my own do

joint purchasing. There does not seem to be a religious or philosophical problem in it.

Just in the middle of our Hamilton conflict over school space, where everybody was saying there was a religious war afoot, in fact the two boards got together and appointed a joint superintendent for French education for the separate and the public boards. Nobody in either board raised a question as to whether there was some fundamental religious problem or constitutional problem involved in that.

Why is there a constitutional problem in this? I do not understand it. The elements that are put aside for exclusive jurisdiction certainly have no direct impact on teaching, classroom activity, functions of instruction. There are not even matters pertaining to audio-visual programs. I really find it very difficult to see where the objection lies.

If you have another model to propose, what is it?

Ms. Charland: I appreciate that there are many examples of people being able to work together in the last 130 years, but I think there are also many examples where it did not work. I think what we are discussing here is that we do have the right to complete autonomy of our Catholic separate school system. Having that right, we are responding to legislation that we, as the Ottawa Catholic teachers, perceive as setting up a model that could interfere with that.

The time to react to it is when you have a chance to react to the proposed legislation, instead of waiting and finding out that when everything does not go as smoothly as it does in the cases you have cited, we then come to say, "Oh, there was a situation here that threatened the autonomy, but we did not respond to it and now we are crying." So we are stating our case now as we perceive a threat to the autonomy in particular areas. We would like that noted and we want to be on record as having noted that at this time, before the legislation is established, so that it could be amended.

Mr. Allen: I think you are quite right to say that the Supreme Court decision makes it plain that, for example, if the English Catholic community, in its wisdom, felt that it never wished to go into an umbrella board structure, no one could ever force you into it. I just do not think there is any possibility of that ever happening.

At the same time, it seems to me for us anglophones, in particular—and here we have a common bond because we are of the same language stock—to raise substantial questions when a minority community in our midst finds that, for its purposes, this kind of co-operative structure is workable and raises no substantial constitutional problem that it would wish to challenge, then I really wonder whether we have a moral right to put that barrier in the way. That concerns me personally.

Ms. Charland: I think we very clearly defined in our brief that we were speaking for the Ottawa Catholic teachers of this community, who would not find this model acceptable, and we gave the reasons they would not. We have said in our second point that we certainly would not want to see this model applied to us if there were to be amalgamation somewhere down the way.

I think we have said at least three times in the brief that we support the idea of the French-language school board but, as Ottawa Catholic teachers, we would not find this model acceptable. I think we have been very careful to

say that we are happy about the aspirations of the francophone community and its realization of them, but we do not want that model used and we do not find it acceptable.

Mr. Allen: I guess the logical conclusion, because you have not responded to my question about the alternative model—I presume that model is a—

Ms. Charland: An autonomous one.

Mr. Allen: —Roman Catholic separate French school board, as such, which would not be a French board, as such, because it would exclude a portion of the French-language community.

Ms. Charland: Roman Catholic.

Mr. McGuinty: I think the question I had in mind has been answered, but I will make an editorial comment just to show, for the record, that I am here.

First, you have a brief brief, but I would not apologize for that, because there is no correlation between the wordiness of a brief and its significance. In fact, sometimes they vary inversely.

I will get back to the point raised by my colleague Mr. Allen, as well as by Mrs. O'Neill, at the bottom of page 2 and the top of page 3:

"The legislation proposes that trustees representing different philosophies of education will be brought together at the same time to take decisions on behalf of the full board in areas that are identified as its exclusive jurisdiction. The philosophies of the Catholic sector and the public sector will, of necessity, have different foci. Thus, decision-making by the full board in its areas of exclusive jurisdiction build in the potential for conflict based on religious grounds."

Along the lines that Mr. Allen suggested, as I understand it from reading the act, the areas of exclusive jurisdiction would deal with such things as plant, equipment, supplies and administrative staff, whereas the other areas that would be within the jurisdiction of the Catholic sector would deal with program, teachers, religious practice and so forth.

Again, I raise the question, what would be the concern there, except maybe with regard to precedent? I know one of my colleagues in the House the other day made the point—I will not mention his name, because he was not of our party—"Where was this idea when Bill 30 was being discussed? Why was this not put forth when Bill 30 was being discussed?"

Mr. Jackson: It was.

Mr. McGuinty: It was put forth and declared unconstitutional.

Mr. Jackson: Or not acceptable.

Mr. McGuinty: Or not acceptable. Also, I recall not too long ago in the Ottawa area we were faced with the extermination of Catholic high schools. I led a committee that sought incorporation of these high schools under the jurisdiction of the public board, with the idea of these schools retaining their distinctive identity, as they had in the past, and their religious

values. It was decided at that time it would not be feasible. So is it with regard to the precedent established here that might be followed up with umbrella boards in the future with regard to other Catholic boards?

1530

Ms. Charland: I think so. I think you have said what we would fear, the precedent setting, and I think we have lots of examples where sharing over the years has not been successful. Hence, we have proceeded to establish the constitutionality.

I think you do not draw up legislation hoping that everything will work out nicely; you look at it very carefully and establish the weak points before it is established and amended.

Mr. Jackson: I wanted to go back to some matters with respect to your wearing federation hats. You are the first deputants before us. Are there no other matters that you wish to concern yourselves with or bring to our attention with respect to this bill? With respect to transfers, with respect to seniority, even the area of the supervisory officers under your federation—I am thinking of the principals or the vice-principals, with transfers—are there no other concerns?

I am surprised. Having spent a whole year of my life on Bill 30, it was 80 per cent federation matters. This is refreshing, but I would like a little bit, to help me with this bill, if I could.

Ms. Charland: You are being very helpful. I think perhaps the other federation that you hear tomorrow morning may have the concerns you are identifying, because in our case, these people are leaving us, so it is not going to have an impact on our seniority and we did not share a common seniority list. I think those kinds of concerns will be raised by our other affiliate.

Mr. Jackson: I thought, as you are waving goodbye to them as they are leaving, you had some other concerns about their wellbeing, but maybe I was reading too much into that. Maybe things have changed since I was a trustee.

Just to comment on Mr. McGuinty's brief statement, we did table, as you well know, an amendment to Bill 30 which would have allowed, by mutual agreement, an option to amalgamate in some fashion, but it was rejected by two of the three political parties in a minority government situation.

Do you feel, since the government of the day referred elements of Bill 30 to the courts to avoid the difficult feelings and to calm concerns being expressed by certain groups, that it should do likewise in this instance if the matters are not clarified prior to royal assent? Do you think they should be consistent in that regard?

Mr. Howard: I missed the—consistent between which parties, Bill 30 and Bill 109?

Mr. Jackson: Yes. Where a question of constitutionality arose on Bill 30, the government, as I understand it, and we all do, enjoined the question to speed it through the courts to ensure that there was no difficulty with the successful passage of the bill. Do you feel the government should be doing likewise in this regard and, therefore, be consistent with Bill 109?

Do you wish to go it alone in the courts, or do you feel the government should be assisting you to make sure this matter is clarified quickly?

Mr. Howard: I would choose the latter route because I think, as was evident in the debate on second reading, the time lines are very quickly upon us—they are upon us now—but the actual implementation of such is really for December, I imagine.

I think probably what we would feel we could contribute best as an association, without sounding too high-faluting, would be to offer the high road in terms of our comments here today. When I look back at the comments of the Minister of Education (Mr. Ward) on May 3, he made a tour de force of French education in the province, and the three parties together had that instinct of saying: "This is a good bill. There are flaws, but let's proceed with the high road in mind." I would like to think that our contribution here would be along that same avenue and that if there are flaws, such as perhaps the constitutionality aspect, that they be done to the satisfaction of ourselves, to parties that questioned it in the House that day. It is not meant as an obstructionist form of behaviour, but, on the contrary, how we can make this work best, first, for Ottawa-Carleton.

If I could just comment on one point I think is important, I found Dr. Allen's comments in the House that day extremely interesting and positive. I will quote them, because I think I would like to loop the answer back to what he said: "Those of us who supported Bill 30 so strongly believed it was only by completing that system that we would be able to move towards a healthy basis of co-operation...that might open up adventures in new and co-operative living."

I think, probably, whether it is the Ottawa unit's unease or the provincial body's unease, it is that Bill 30 is not truly all the way upon us. We still feel great weaknesses in our funding, particularly in the industrial-commercial base. We are really, in some ways, operating with one arm behind our back, because, as Mr. Ward has said, "It takes time, Mr. Howard," or "It takes time, Mr. Fauteux," or whatever.

I think we do subscribe to that, that it does take time. I do feel that, having just received, really, the first benefits of Bill 30 in the form of grades 11, 12 and Ontario academic course only this year, as well as the allocations of the last month, we still realize that there is unease when you say, "Now that we've made these first steps, let's move towards a unified model throughout the province." I do not think you meant that, but I think you might be able to pick up from us that there is more than a bit of unease as we wonder if this is the future, that we who are at this table today, on this side or on that side, would forget that the great care we are taking in bringing in this bill would be forgotten 15 years down the road and that unified boards would seem like a natural progression. It could be.

Mr. Jackson: In conclusion, as one who also spoke in the House, I want to make it clear that I do not see it as a flaw. I had indicated quite clearly that it would be irresponsible legislation for it to proceed without all matters which appear as legal impediments being resolved. That is why I will, with the chair's indulgence, be requesting that the Attorney General (Mr. Scott) of this province attend before this committee and clarify that point. But I made it abundantly clear that I do not see that as a flaw. I would consider it irresponsible legislation if somehow we did not resolve that fundamental question.

Mr. Chairman: Ms. Charland, Ms. Tobin and Mr. Howard, I would like to thank you very much for your presentation. We do appreciate it. Thank you very much indeed.

Ms. Charland: Thank you very much.

M. le Président: Est-ce que M. Gilles Marleau est ici?

While Mr. Marleau is coming forward, I will explain for the benefit of the committee and those here how I see us proceeding. After Mr. Marleau's presentation, we will adjourn until 5:15, when we will return to hear the Comité de liaison du Conseil scolaire d'Ottawa. Then, by the way, we will adjourn until 9:30 tomorrow morning. We have a very heavy day here throughout tomorrow, through to tomorrow evening. Tomorrow evening, at some point, we will again adjourn and continue public hearings at Queen's Park on Monday, May 30, at approximately 3:30.

Mr. Marleau, do you have a written brief?

Mr. Marleau: No, I do not. I am sorry. I was speaking with the translator, and he said there would not be any problem.

Mr. Chairman: Very good. Would you state your name and your affiliation, if any, for the benefit of Hansard and translators, please?

GILLES MARLEAU

M. Marleau: Mon nom est Gilles Marleau. Je ne représente aucun groupe en particulier. Je suis père de quatre enfants qui fréquentent le système des écoles séparées de Carleton.

I would just like to make an observation to start off. I know I have been given 15 minutes. I hope it does not reflect on the prospective quality of my presentation. I know all the others just preceding me had half an hour, so I hope you will be indulgent if I should pass time for one or two minutes.

Mr. Chairman: The rule of thumb was that groups had half an hour and individuals had a quarter, but if you would like to take half an hour, feel free to do so.

1540

M. Marleau: Je voudrais d'abord remercier les membres du Comité, Monsieur le Président et vos collègues, de bien vouloir m'accorder l'occasion de vous adresser la parole. Je voudrais remercier les législateurs responsables de la présentation du projet de loi 109 et de son passage éventuel, avec amendements, j'espère.

Je voudrais remercier M. Albert Roy et les membres de la commission Roy, dont l'excellent rapport a servi de base à ce projet de loi 109. Je voudrais remercier MM. Maurice Lapointe et Jean Comtois, qui ont travaillé d'arrache-pied à la réalisation de ce projet d'un conseil homogène de langue française dans Ottawa-Carleton.

Oui, un conseil homogène de langue française est nécessaire dans Ottawa-Carleton. Oui, nous souhaitons sa création. C'est là la meilleure façon

de permettre aux francophones de gérer leurs propres établissements scolaires, tout en respectant les droits de chacun, catholique et non catholique.

The reason I asked to come before you is that I love Canada, I love Ontario and I love my children. I believe this country and this province are second to none and I believe my children should enjoy equal opportunity. Everything I am about to say is meant in a positive way to make our community better. Nothing in the following should be taken along personal or party lines. All I wish to do is make things better. Presently in Ontario there is a chronic underfinancing of schools attended by francophone Catholic students as compared to those in the public sector.

In Ottawa-Carleton we are talking about a difference of several hundred dollars per student head between the moneys available to francophone Catholic schools as compared to schools in the public sector. This situation is unconstitutional. This situation infringes on the human rights of francophone Catholics. This situation is unfair and unproductive. I will proceed to expand on these three points in reverse order.

The underfinancing of schools attended by francophone Catholics compared to the public sector is unfair and unproductive. Witness the higher illiteracy rate among Franco-Ontarians. Witness the lower rate of attendance at university by Franco-Ontarians. Witness the generally poorer conditions in Franco-Catholic schools: less diversity of programs, fewer support aids and teachers, fewer supplies and more portable classrooms. Franco-Ontarians can make a much greater contribution to Ontario's economy and social fabric. We can contribute more. We ask only to be given equal opportunity.

Second, the present situation, as well as some of the proposals contained in Bill 109, infringe upon the human rights of francophone Catholics. If you read part IV, paragraphs 17(2)3 and 17(2)5 and then subsections 18(5), 18(7) and 18(8) of Bill 109, you will be astounded by the racist elements found therein.

To suggest that in determining school support in the case of multiple owners or tenants, the choice of a single supporter of the public system has predominance over the choice of one or many Roman Catholic school supporters and, similarly, that the choice of an English-language board supporter has predominance over the choice of one or many French-language board supporters is racism in the purest sense. How can Ontario stand there and even dare to suggest that the voice of a francophone or a Catholic does not have the same weight as that of an anglophone or a non-Catholic in Canada? Is that what the entrenchment of human rights in the Constitution of Canada or the Ontario Human Rights Code is all about?

We would expect the government of Ontario to protect these rights, not to infringe upon them. If you have any doubts about the racist aspect of these articles, try substituting the word "Catholic" for "public," "English" for "French" and vice versa; then read the same paragraphs. Doubters will soon see how it feels.

Third, the present situation is unconstitutional. It is unconstitutional not only with respect to human rights, which are part of the Constitution, but also as regards section 23 of the Charter of Rights and section 93 of the Constitution. Francophone Catholics are the most protected persons in the world in regard to their rights to education. They have a right to publicly financed Catholic schools, section 93. They have a right to publicly financed French schools, section 23. Both of these rights have been recognized by the

courts, and yet despite all these guarantees, francophone Catholics continue to send their children to schools that are underfinanced in Ontario.

The reason for this is that Ontario has refused over the years to equate the right to publicly financed education with the right to equal financing. I am here to beg you to change that, to recognize that the Constitution of Canada applies equally to all Canadians, that the right to publicly financed schools means access to equal financing. To underfinance francophone Catholic schools is contrary to the meaning and intent of the Constitution of Canada. I am here to beg of you to stand up for the Constitution of Canada and the equal rights of all under it.

I suggest Ontario has a choice: to amend its laws to ensure the equal financing of French Catholic schools, effective 1988, as compared to the public sector, or face a court challenge as regards equal financing retroactive back to 1982, the year of the coming into force of the Charter of Rights. Retroactive payments back to 1982 could prove to be very costly, and the province would be in the awkward position of defending inequality for francophone Catholics.

The question is then put, how can the province ensure equal financing of francophone Catholic schools? The best way is to pool commercial and industrial school taxes provincially or regionally and to distribute them according to the number of students under each board. Another way would be to write in the law that the province will provide to the francophone Catholic board such subsidies as will ensure it the same per student capital financing as is available to the English sector board in the same geographic area. Such subsidies would have to be free of any extra conditions for access or spending not likewise imposed on the English public boards with regard to the commercial and industrial school taxes they collect and spend.

I believe the first option of pooling commercial and industrial school taxes and their distribution per student head is much better. Matching francophone Catholic school financing with that of English public boards by subsidies could prove to be highly expensive, since the public board revenue is highly out of proportion because of its nearly exclusive access to commercial and industrial school taxes.

As I speak to you, I know lawyers are looking into all constitutional aspects with respect to the underfinancing of francophone Catholic schools. I suggest Ontario would be better served by amending its laws instead of forcing recourse through the courts in a case where it would be defending inequality.

Finally, I beg of you again to ensure equal financing of francophone Catholic schools as compared to English public schools, and respect for the Constitution of Canada. Respect for the Constitution: That is what unites us, whether we are Catholic, Protestant, Jewish, Moslem, French, English, Italian. Respect for the Constitution is first and paramount. Without it, it is in vain that we would sing "O Canada, we stand on guard for thee."

Mr. Allen: Mr. Marleau, you are dead right. The whole question of education finance in Ontario rests on a very invidious, highly questionable, probably discriminatory and perhaps even racist basis. It is true that the Ontario courts have, in the Marchand case, declared that the French students and French schools have an equal right to education resources and a right to an education equal to that of their counterparts in the anglophone community.

1550

That, however, has not, apparently, been seen, to date, as having any impact upon the structures of education finance in general in Ontario. You probably know that the province establishes ceilings of expenditure and that the government provides make-up grants to get all boards up to the equivalent of a ceiling expenditure, but you will also be very familiar with the fact that some boards, by virtue of their commercial-industrial assessment, are almost able to do without government funding, the city of Toronto being the most notable case in point.

I would be very interested in seeing the results of a legal challenge of the kind that you suggest, because I think it would, indeed, put the government on its mark and force us, at last, to address those questions. The reason that, to date, commercial-industrial tax pooling has not taken place is probably twofold. The argument that has carried some weight has been that local boards would have their autonomy trespassed upon, but that is perhaps a lesser principle than the questions you raised.

The other reason they have not, in fact, been tackled in an acceptable way is that no government to date has been willing to guarantee that all of the money collected under such a gathering in of all those taxes would, in fact, be redistributed again in education expenditure. That has been one of the sticking points in that whole debate. None the less, the principle that you address is sound.

I have no problem with it and I would like to encourage anyone who wishes to make that kind of challenge to proceed.

Mr. Marleau: I think the comments I would have to make are in my presentation. I do not think I would really want to repeat them, but I would like to make just one point. I think in English Canada we have a respect for law and order and good laws, and for the Constitution, I hope. But I am an Ontario-born francophone, and I remember looking across the border to Quebec in the days when René Lévesque was Premier of Quebec. He had at one point ceased to publish the laws of the province of Quebec in English, and the matter had gone to court. It went to the Supreme Court of Canada. The judgement was against him. I would say, if my memory is correct, that not more than one or two weeks, if not days, later there was a kind of special, urgent reunion of the members of the Legislature of Quebec to respect the Constitution of Canada.

What gets me and hurts me in my very soul is that here we are disregarding the Constitution of Canada, disregarding my rights and disregarding the rights of my four children, and nobody takes that as an urgent matter and calls an urgent session of the Legislature to comply with the Constitution of Canada. I cannot, for the life of me, understand that.

Mrs. LeBourdais: Mr. Marleau, I would just like to commend you specifically for your presentation today. Unlike my colleagues, I do not have 10, 12, 15, 16 or 20 years' experience in education. I approach it strictly as a layperson and, like you, a parent.

You mentioned that you are a francophone Ontarian. I am an anglophone Quebecker by birth, but I have been truly touched by the direct appeal that you have made, not on behalf of teachers' pension plans, annuities and a variety of things that have been brought today but rather, in a very direct approach, on behalf of children and their needs.

The points that you have very well articulated with respect to the constitutionality, I would certainly give great support to, because I think many of the points you made are very justified. So, if I may, je voudrais vous remercier pour une excellente présentation. Je ferai de mon mieux pour vous aider.

M. Marleau: Merci beaucoup.

Mr. Campbell: I think, Mr. Chairman, you know there is a bit of a historical reference as to why an assessment has been done traditionally as it has been, and that is, of course, that the public board in the past had the ultimate responsibility and took in every student, whereas traditionally and historically the Roman Catholic board dealt with the Roman Catholic faith and students and people of the Roman Catholic faith. I am just commenting; I am not saying it is right or wrong, I am just commenting as to the historical fact as to why it is.

Perhaps the change in the time, perhaps the review that is ongoing by the Ministry of Education about a number of these issues will address that. I think arguments that I wanted to say to the presenter that I believe very strongly that some of these comments that are being made are being listened to in looking at how to design a new tax formula, and I am not saying that it is going to happen in precisely the manner that has been suggested, but the comments, I think, have been heard time and time again.

I also say to you, sir, that I was pleased for virtually the first time to see the direct reference to kids. As a former educator myself before I got this job, I can tell you I always tried to feel at least that that was my focus, and I appreciate your comments coming from the heart, as they obviously do, sir:

Mr. Marleau: Thank you.

M. Villeneuve: Monsieur Marleau, puis-je moi aussi vous remercier de votre présentation, d'avoir pris le temps de nous expliquer certaines des choses qui vous tracassent. Vous avez touché à la décision du juge Sirois, à la situation à Penetanguishene, où le gouvernement a fait appel de la décision du juge Sirois, qui disait tout simplement que nos francophones avaient les mêmes droits que les anglophones, et je crois que c'est à ça que vous avez touché. Et puis dans le projet de loi 125, sur l'énumération, nous avons encore une certaine inclination vers la majorité d'expression anglaise, et puis vous avez mentionné certains articles dans le projet de loi 109 qui, eux aussi, ont tendance à pencher vers la majorité d'expression anglaise.

D'après vous personnellement, que pensez-vous du fait que le gouvernement a fait appel d'une décision qui disait tout simplement que nous, les Ontariens d'expression française, avions les mêmes droits que les anglophones?

M. Marleau: Disons que dans le cas Marchand, bien sûr que je regrette cet appel, mais je crois que le gouvernement va y repenser à deux fois devant les faits tels que je les présente. Si le gouvernement persiste dans une attitude raciste, dans une attitude d'inégalité, je crois que ça va lui tomber sur la tête un jour ou l'autre.

Je suis au courant de la situation; je vais battre tambours et trompettes pour la changer. Je sais que notre droit est réel, et puis le

gouvernement, à mon avis, devra reculer là-dessus. La constitution du Canada, c'est la pierre angulaire du Canada. Si on ne peut pas s'entendre pour la respecter, malheur à toutes nos lois, malheur à nous; ce qui fait que je suis sûr que le gouvernement va y repenser à deux fois.

M. Villeneuve: J'apprécie infiniment le fait que vous êtes ici et le message que vous livrez de la part de vos contemporains. Soyez rassuré que le Comité va certainement faire référence à ces choses-là en formulant les amendements qui vont vraisemblablement découler de ces présentations. Je vous remercie infiniment.

1600

Mr. Marleau: There is only one question, if I could. Because I am a librarian, I know that when the committee is sitting outside of Toronto, the proceedings are not published in Hansard. I was wondering if maybe—it is not possible in this instance, but I was wondering if the committee would like to start publishing the proceedings that are taking place outside of Toronto, because I think the printed word is more widespread—

Mr. Chairman: We do have Hansard with us, and it will be printed. It is relatively unusual for a standing committee to meet outside of Toronto while the House is sitting. We were given permission to do so and we have Hansard with us.

Mr. Marleau: I know that a couple of years ago, I think it was on the occasion of Bill 30, the committee came, but it was not published.

Mr. Jackson: It was published.

Mr. Marleau: It existed, it was recorded, but it was not published in the final, official format. Thank you.

Mr. Chairman: We will conclude with Yvonne O'Neill.

Mrs. O'Neill: Mr. Marleau, the reaction of my fellow committee members to your presentation has been of great interest to me. I hope you are going to present your work to us, table it with us. I think it would be very helpful.

You said in one statement that you want to do all that you can, and I would suggest, because we are the social development committee of parliament—as I said earlier, there are several ministries which have been involved and which are interacting on this whole piece of legislation—I would like really to beg you to put your concerns to the Ministry of Municipal Affairs and the Ministry of Revenue, respectively John Eakins and Bernard Grandmaitre.

The reason I say that is that I think we are at a very great turning point in recognizing the needs of Franco-Ontarians—at least, I hope so. I see that because we are now proceeding into an enumeration of francophones. We are trying to do it a different way, what we consider more efficient and a way that has a new expression of fairness to it. But we need a lot of support and input, and we have tried to do that in subsidizing in some way the dissemination of this information of the Franco-Ontarian community and soliciting the associations to help us.

We need input like yours to the ministers who are involved, because this whole business of election enumeration is certainly going to be looked at very carefully after what I consider, again, to be the turning-point election of 1988. I would ask you to fulfil your commitment to do what you can first, to table that brief with us, and second, to send a more succinct letter talking from your heart, as you have to us, to request a meeting with those two ministers first, and then put your concerns in writing.

Mr. Marleau: This is handwritten at present, but I will have this typed and I will be sending you a copy.

Mr. Chairman: If you could submit it, we would be most grateful. Were you able to note the names of the ministers, the Honourable John Eakins, Minister of Municipal Affairs, and the Honourable Bernard Grandmaitre, Minister of Revenue? You will be sending us the copy.

Mr. Marleau: Yes.

Mr. Chairman: Thank you very much. Je vous remercie beaucoup.

Before we recess until 5:15, I think Cam Jackson would like to move his motion.

Mr. Jackson moves that the standing committee on social development invite the Attorney General and any ministry officials he may deem appropriate to appear before the committee to answer questions that have arisen with regard to the constitutionality of the dual sectors within a full board structure as proposed in Bill 109.

Is there any discussion of that motion? All those in favour? All those opposed?

Motion agreed to.

Mr. Chairman: Before we conclude, if I could just mention an organizational thing, we have arranged for us to have a working lunch here in the hotel tomorrow. So after the morning's proceedings, those of you who are still with us, we will have a working lunch at 12:30 in the Carleton room in this hotel.

For the benefit for those here, we are going to recess until 5:15, when we will return for the final delegation today. Following that, we will adjourn until tomorrow morning at 9:30 in this same room. Members of the committee may leave their notes and so on here, both now and tonight.

The committee recessed at 4:06 p.m.

1722

Mr. Chairman: I see at least one member of the committee still in the room. We will reconvene. For those people who are new, we had a break to await this next presentation. I would mention to you that it is channels 7 and 8 of the device that you use for the simultaneous translation. I would remind groups that they have half an hour, and that includes the time for questions. If our next group, le Comité de liaison du Conseil scolaire d'Ottawa, would come forward, I would be grateful.

Pouvez-vous tous donner votre nom, lentement, dans les micros pour les interprètes et Hansard, s'il vous plaît. Madame d'abord, peut-être.

COMITE DE LIAISON DU CONSEIL SCOLAIRE D'OTTAWA

Mme Johnston: Denise Johnston, Ecole élémentaire Franco-Jeunesse.

Mme Yamasaki: Marguerite Yamasaki, Ecole secondaire Charlebois.

M. Ferrand: Yvon Ferrand, Ecole secondaire De-La-Salle.

Mme Landry-Kennedy: Mireille Landry-Kennedy, Ecole élémentaire Gabrielle-Roy.

M. Ferrand: Monsieur le Président et membres du Comité permanent des affaires sociales, le Comité de liaison du Conseil scolaire d'Ottawa est composé des membres suivants, des associations de parents et d'enseignants: M. Oliviera, Ecole secondaire André-Laurendeau d'Ottawa; moi-même, Yvon Ferrand, Ecole secondaire De-La-Salle; M^{me} Denise Johnston, Ecole élémentaire Franco-Jeunesse; M^{me} Mireille Landry-Kennedy, Ecole élémentaire Gabrielle-Roy; M^{me} Lise Legault, Ecole élémentaire Le Trillium; M^{me} Claire Samson, Ecole secondaire Champlain; M^{me} Marguerite Yamasaki, Ecole secondaire Charlebois; et M^{me} Joanne Forest, 4^e Ecole élémentaire d'Ottawa.

Après examen minutieux du projet de loi 109, nous vous présentons le mémoire ci-joint, dans lequel nous vous faisons connaître notre position, accompagnée de nos commentaires et de nos suggestions. Ici, Monsieur le Président, je voudrais vous faire remarquer qu'on représente un peu plus de 4000 élèves.-

Le conseil scolaire de langue française: Nous saisissons l'occasion de réagir avant que le projet de loi 109 comme tel ne soit adopté. Nous nous réjouissons de cette initiative heureuse de consulter les intéressés. Elle fait preuve de maturité puisqu'il eût été plus facile de se contenter d'une seule orientation et d'aller de l'avant. Le risque de la consultation est donc le gage de la fixation d'objectifs partagés.

Nous prenons position résolument en faveur du conseil scolaire de langue française. La perfection étant parfois la pire ennemie du bien, si nous l'attendions, nous risquerions de retarder indûment la mise sur pied du conseil et d'être perdants. Nous croyons que le projet actuel est la solution souhaitée et voulue et qu'il favorise la réalisation des objectifs que tout francophone recherche en éducation. Sans donc espérer la perfection immédiate, et à cause de cela même, nous proposons des améliorations sur trois chapitres.

Premièrement, nous partageons les inquiétudes soulevées par le Conseil de l'enseignement en langue française, le CELF, du Conseil scolaire d'Ottawa, le CSO, dans son document du 27 mars dernier en ce qui a trait à la constitutionnalité du projet. Comme en fait foi l'analyse de M^e Beaudoin, et la référence est en bas de la page, <La question de l'établissement d'un conseil scolaire homogène francophone>, tout n'est pas si limpide sur ce chapitre. Sans nous ériger en spécialistes de la question, nous souhaitons au point de départ qu'une position claire soit établie et reconnue.

Il faut beaucoup plus que des études minutieuses et des examens quant aux implications constitutionnelles et à leur impact potentiel. Il est impératif, à notre avis, qu'une conclusion nette soit dégagée de ces études. C'est pourquoi nous ne nous contentons pas d'une simple affirmation sur ce chapitre et qui se veut rassurante. Nous demandons que vous obteniez un avis juridique non équivoque et bien fondé avant de nous engager dans un processus qui pourrait s'avérer instable.

Deuxièmement, nous appuyons en entier la position du CELF sur le maintien de la qualité et de la diversification des services pédagogiques existants. L'analyse que le CELF a produite nous apparaît tout à point et concluante. C'est pourquoi nous recommandons que vous inscriviez dans le projet de loi les principes mis de l'avant par le CELF, et nous les reprenons ici pour vous en faciliter la référence:

1. <Une conception globale de l'éducation qui réponde à tous les besoins de la population et serve toutes les tranches d'âge (éducation permanente, éducation des adultes, récupération des décrocheurs, alphabétisation, intégration linguistique et culturelle des Néo-Canadiens, cours de perfectionnement, de recyclage, de développement individuel et communautaire).>

2. <Le droit de la population francophone au choix entre une éducation confessionnelle et non confessionnelle.>

3. <La mise en place de structures qui assureront sans équivoque, sinon l'amélioration, du moins le maintien de la qualité des services déjà en place.>

De plus, nous faisons nôtre le principe évoqué par M^e Beaudoin suivant lequel les structures ne doivent pas être préjudiciables à leurs droits. On parle ici des droits des catholiques, mais cela vaut également pour le secteur public. Il serait, en effet, néfaste que les structures du nouveau conseil scolaire de langue française deviennent une barrière au maintien des droits acquis et à la qualité des services éducatifs. Pour éviter ce piège en partie bureaucratique, nous sommes d'avis qu'il faut partir du déjà acquis. Même le statu quo serait un recul puisqu'il est de l'essence même de l'éducation de progresser et de faire progresser.

1730

Financement: Nous référant à notre principe énoncé ci-dessus, à savoir la nécessité du maintien du niveau de qualité déjà atteint au système public d'éducation, nous pouvons maintenant établir un lien nécessaire entre ce principe et les moyens indispensables pour le mettre en pratique. Puisqu'il a fallu des décennies pour atteindre un niveau de qualité comparable à celui des anglophones, en particulier au palier secondaire - puisqu'il n'y a toujours pas d'université francophone -, il faut à tout prix que le législateur traduise en gestes ce que ces paroles suggèrent par écrit, c'est-à-dire un financement adéquat, précisé et chiffré, et assuré pour l'avenir.

Ce ne sont certes pas les termes flous du projet actuel qui peuvent en assurer la crédibilité. Avec des engagements aussi imprécis que ceux qui sont mis de l'avant en page 18, personne ne peut sérieusement prêter foi à cette réforme. Par exemple, je cite: <des montants>, <fonctionnement efficace>, <le ministre peut>, autant de termes à préciser pour que la population francophone sache à quoi s'en tenir. Et encore et surtout dans le dernier paragraphe de la même page, <les méthodes de financement provisoires seront élaborées> pour <aider> le conseil <dans ses premières années d'existence> à offrir ces programmes. En toute honnêteté, qui oserait se lancer en affaires avec de telles perspectives et promesses vides de sens? Encore moins en éducation, vous en conviendrez.

Nous recommandons, en conséquence, un engagement précis afin de nous assurer une certaine stabilité. Comme l'écrivait M^{me} Johnston le 29 avril dernier dans sa lettre adressée à l'honorable C. Ward, ministre de l'Éducation, au nom du Comité de liaison représentant les associations de parents et d'enseignants des écoles élémentaires et secondaires

d'Ottawa-Carleton, nous voulons être en mesure non seulement de faire démarrer mais surtout de pouvoir maintenir des services de qualité qui ne soient pas à la merci des politiques du moment. Pour ce faire, nous demandons d'insérer ces modalités dans le texte de loi.

En résumé, les recommandations que nous vous avons faites sur ces trois chapitres nous semblent des conditions sine qua non de l'acceptation de ce nouveau conseil.

Enfin, nous voulons à peine soulever quelques questions qui nous préoccupent et auxquelles nous n'avons pas trouvé de réponse dans ce projet. Il s'agit du droit des Néo-Canadiens en tant qu'électeurs; de la représentation équilibrée de ceux qui n'ont pas d'enfants par rapport aux parents directement impliqués; de la façon dont vous vous acquitterez du dénombrement des parents catholiques par rapport au secteur public; et surtout de la méthodologie, c'est-à-dire des critères de distribution des fonds. Voilà autant de questions qui restent en suspens mais qui devront trouver des amorces de solutions à tout le moins pour que nous, en tant que parents, nous puissions rendre concrets tous ces projets que vous élaborerez loin du quotidien.

C'est parce que l'on tient à agir de façon éclairée et dans un objectif de poursuite de l'excellence éducative pour tous les francophones que nous vous adressons ces commentaires et suggestions. Puissiez-vous en tenir compte et nous tenir bien informés de tout développement. Merci.

Mrs. O'Neill: I would just like to go to that last folio you have been talking about, the enumeration process. I feel we are at a crossroads. I have said this before today and I really feel that organized groups like yourselves, leaders within the community, should make your concerns, suggestions and all the other comments you want to make on that enumeration form in writing to the Minister of Municipal Affairs (Mr. Eakins).

There is a lot of interministerial consultation going on, but I think that being substantiated by people like yourselves about your concerns about that form can do nothing but help to improve it for the next time around. This was a first shot. It is, as I say, a turning point where we are now appealing to people to count themselves in, to make a real effort to be part of a permanent voters' list. I really ask you to try to help us in that. Please, even if you want to send just that page in this brief to the Minister of Municipal Affairs, we would appreciate that.

If I may go to part of your brief, folio 3, the paragraph at the top of the page, I would like you to explain to me a little more of what your concern is there. I am having some difficulty. This is the paragraph immediately preceding the section on finance.

M. Ferrand: Est-ce qu'il y aurait moyen de faire traduire ça en français pour que je comprenne clairement la question?

M. le Président: Oui, certainement.

M. Ferrand: Merci.

Mrs. O'Neill: I think my questions are all being translated, are they not? Oh, they do not have headsets. I am sorry, I did not realize you did not have them.

M. Ferrand: J'ai compris la suggestion que vous nous avez faite antérieurement et je l'apprécie, mais j'ai de la difficulté à suivre la question que vous posez maintenant.

Mrs. O'Neill: I am just wondering if you could please just expand on that paragraph.

I guess we do not need microphones. We are pretty close here.

Interjection.

Mrs. O'Neill: OK. You are right again, Mr. Campbell.

Mr. Chairman: Yvonne O'Neill, would you repeat your question, please?

Mrs. O'Neill: As you say you have got the gist of my question, I think I have got the gist of this paragraph, but I would like to get more fully what that paragraph means. If you could help me, I would appreciate that.

M. le Président: A la page trois, au deuxième paragraphe.

Mrs. O'Neill: If you could just give me some examples of what you are really saying there, I would appreciate that. What are your concerns?

Mme Yamasaki: Il vous faudrait vous référer à ce moment-là au document de M^e Beaudoin, qui avait été consulté sur la question de la constitutionnalité du conseil de langue française, vu que, d'après l'article 93 de la constitution, les conseils devaient être groupés par question confessionnelle et non par question linguistique. Et pour nous cette question-là, on la voit dans les journaux, on la voit un peu partout. Il y a plusieurs personnes ou groupes qui se sont posé la question.

Si le conseil de langue française était mis sur pied, avec son secteur public et son secteur confessionnel, il nous faudrait peut-être aller devant les tribunaux pour avoir des éclaircissements. Alors, c'est là-dessus que nous nous disons qu'il vaudrait mieux être sûr avant de s'engager là-dedans.

On demande ça d'abord très clairement puisque mettre sur pied quelque chose qui peut être contesté à n'importe quel moment, ça ne donne pas grand-chose. Puis on a lu le document que M^e Beaudoin avait émis lors de la consultation, et ce n'est pas très clair. A un moment donné oui, c'est constitutionnel; et puis un peu plus loin, il semble faire des réserves. Alors, nous voudrions que ce soit très clair pour ne pas être pris dans un système qui, tout à coup, n'est pas sûr.

Mrs. O'Neill: I am very sorry, Mr. Chairman. I do not think that is the part I do not understand. I think the part I do not understand contains the questions regarding the quality of education and that part of it. I am having difficulty tying that in with your concerns about constitutionality. Maybe it is very closely tied.

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Mme Landry-Kennedy: Madame O'Neill, est-ce que vous parlez du petit paragraphe III, ou bien du gros paragraphe juste en dessous?

Mrs. O'Neill: Page three.

Mme Landry-Kennedy: Qui commence par <de plus>?

Mme O'Neill: <De plus>, that is it.

Mme Landry-Kennedy: D'accord. Si je peux vous donner un exemple un peu plus concret ici, c'est qu'à l'intérieur des structures du conseil francophone, il ne faudrait pas que le secteur public devienne un simple appendice du secteur séparé. Il faudrait que les structures en place assurent la viabilité à long terme du secteur public. Et une fois rendu dans le conseil francophone, il ne faudrait pas dire à un moment donné que le conseil francophone n'est pas constitutionnel; il faudrait que le secteur public, qui, à ce moment-là, ne pourrait pas retourner à son conseil public, soit d'Ottawa ou de Carleton, devienne un simple appendice du secteur séparé, et <Bon, venez vous joindre à nous autres, on va vous accepter>. Il ne faudrait pas être les parents pauvres du secteur séparé.

M. le Président: Madame Yamasaki, avez-vous d'autres commentaires?

Mme Yamasaki: Non, je n'en ai pas puisque pour moi, c'est très clair.

Mrs. O'Neill: Of course, it is very easy for the author to understand. Sometimes the reader has a little more difficulty.

M. Ferrand: Si nous n'avons pas les réponses à toutes vos questions, nous nous ferons un plaisir quand même de retourner au groupe de travail qui a aidé à préparer le document. A ce moment-là, nous pourrions toujours vous faire parvenir une réponse encore plus claire, si vous le préférez.

Mr. Campbell: It seems that the enrolment in each group is approximately equal. If I look at an earlier submission, there are approximately 5,000 students in the proposed separate French board and approximately 4,000, I heard you say, in your jurisdiction. Is that how you understand that?

M. Ferrand: Lorsque j'ai cité le chiffre d'environ 4000 élèves, je parlais strictement du secteur public d'Ottawa, je n'inclus pas Carleton.

Mr. Campbell: Do you have a sense of how many in each jurisdiction would be the total that would be in the public jurisdiction, whether it is the Carleton board or the Ottawa board, and the separate, whether it is the present Carleton board or the Ottawa board?

M. Ferrand: Nous n'avons pas les chiffres avec nous ce soir. On pourrait se les procurer si c'est ce que vous désirez. Je n'ai que les chiffres pour le secteur public d'Ottawa avec moi.

Mme Landry-Kennedy: D'ailleurs, nos membres du CELF pourraient vous fournir ces chiffres-là demain dans leur présentation.

M. Campbell: Monsieur le Président, je ne parle pas français assez bien pour poser des questions. I hope you have patience with me, because it is the first time I have been in this forum.

I just want to be clear. It would help this committee and my understanding of the situation if I knew the approximate numbers, and that is why I asked the question, for what I understand to be four jurisdictions and two proposed jurisdictions. That would be my understanding. If I am not correct, maybe I could be corrected either now or tomorrow. There would be a

segment from the Carleton board that would be French language but denominational and nondenominational, and also a similar split in the present Ottawa board which would be denominational and nondenominational. Maybe the respondents could respond.

Mme Landry-Kennedy: C'est quoi, le but de votre question, Monsieur Campbell?

Mr. Chairman: You are interested in getting the numbers for each of the jurisdictions, and Mr. Ferrand said he does not have the figures with him.

Mr. Campbell: No, I understand that.

Mr. Chairman: Are you asking that perhaps Mr. Ferrand or his colleagues would provide us with those tomorrow or—

Mr. Campbell: Mr. Ferrand indicated to the committee that those figures could be made available, and I think it would help this committee's deliberation—today, tomorrow, whenever—if they could be made available to the committee to help us understand this segment of the problem. I am very specific in that, and I do understand, coming from a jurisdiction that I do come from, about the debate between denominational and nondenominational French-language education, if that would clarify.

Mme LeBourdais: Vous voulez avoir les chiffres concernant des quatre sections pour demain, si c'est possible.

M. Ferrand: On devrait être en mesure de vous apporter les chiffres en question. On va vous les apporter demain, Monsieur.

M. le Président: Je vous remercie.

M. Allen: Merci. C'est un plaisir d'avoir votre mémoire et d'avoir l'occasion d'en discuter avec vous.

A l'égard de la question de la constitutionnalité du projet de loi et du conseil scolaire homogène francophone de cette région, je pense que des jugements ont été émis par des constitutionnalistes, comme M^e Beaudoin, M^e Foucher et les autres, à l'égard de la constitutionnalité de ce projet. Notre comité n'a pas les documents en question. Vous est-il possible de discuter avec nous des conclusions de la plupart de ces documents sur la constitutionnalité d'une telle structure pour le conseil?

Mme Johnston: Est-ce que vous dites que vous n'avez pas le document que nous avons cité là-dessus? C'est ça que vous dites?

M. Allen: M^e Gérald Beaudoin a écrit un long jugement sur la constitutionnalité de ce projet et il a dit que c'est constitutionnel; M^e Foucher aussi, et il y en a d'autres. Vous n'y avez pas fait référence dans votre mémoire, mais connaissez-vous ces documents?

Une voix: Oui.

M. Allen: Notre comité a récemment adopté une motion demandant au procureur général de l'Ontario (M. Scott) de nous familiariser avec la constitutionnalité de cette question. Les membres de ce Comité n'ont pas connaissance de ces documents. Vous est-il possible de faire un petit commentaire pour nous sur votre point de vue à l'égard de ces documents, car j'ai l'impression que vous n'avez pas été absolument rassurés par eux.

Mme Yamasaki: Je dois vous dire que nous avons suivi la chose depuis le début, au moment où M^e Foucher a présenté tout ça. Nous étions certains que tout était constitutionnel, nous nous sommes fiés à ça. Maintenant, on a reçu le document de M^e Beaudoin, qui dit que c'est constitutionnel. Mais au cours des derniers mois, si on a lu les journaux de la région, on sait que certains groupes sont en train d'insinuer que ce n'est peut-être pas constitutionnel et qu'une fois que ce sera en place, il faudra peut-être aller devant les tribunaux pour s'assurer si c'est constitutionnel ou pas. Alors nous, en tant que parents qui ne sont pas des constitutionnalistes, nous avons nos inquiétudes.

M. Allen: Moi aussi.

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Mme Yamasaki: Alors, nous vous en faisons part et nous vous demandons que cette constitutionnalité soit assurée avant qu'on ne fasse les grands pas. Il me semble que le ministère de l'Éducation ou tout autre ministère a certainement les moyens de s'assurer que ça l'est. Pouvez-vous vous imaginer ce qui arriverait si, en janvier 1989, le conseil de langue française est sur pied, puis en avril 1989, ce n'est plus constitutionnel? Où les francophones qui appartiennent au secteur public vont-ils se retrouver? Le Conseil scolaire d'Ottawa n'aura plus le droit d'offrir des services aux francophones.

Alors, autant nous étions rassurés, autant nous avons des doutes maintenant, puisque les journaux, depuis quelques mois, nous font savoir que tel et tel groupe réuni a décidé qu'on devrait peut-être poursuivre notre cause devant les tribunaux. Comme nous, les parents, n'avons pas les moyens de dire, «Bon, on va y aller et puis on va chercher à résoudre tout ça», on attend que quelqu'un nous aide.

Mme Landry-Kennedy: Ce qui a attiré mon attention dans le passé, c'étaient les discussions sur la mise en oeuvre de la Loi 30. J'ai suivi de très près les discussions qui ont eu lieu à Queen's Park, puis à un moment donné, lors de la mise en oeuvre, on a parlé en même temps d'une certaine amalgamation, surtout du côté anglophone, des deux secteurs – le secteur séparé et le secteur public – et à ce moment-là, on a dit qu'il était inconstitutionnel d'amalgamer, du côté des anglophones, le secteur public et le secteur séparé.

Alors, la même question se pose pour les francophones. S'il est inconstitutionnel pour les anglophones d'amalgamer le secteur séparé et le secteur public, est-ce que ça devient constitutionnel pour les francophones? Est-ce que c'est parce qu'on est francophone que ça devient constitutionnel, ou bien, est-ce que la loi va s'appliquer à tout le monde?

Alors, peu importe ce que M^e Beaudoin dit, il y a certains points de vue qui ne sont pas consistants dans le rapport Beaudoin; surtout vers la fin, on semble forcer les conclusions. Les peurs sont arrivées lorsqu'on a discuté en fin de compte de la Loi 30, de l'amalgamation des deux secteurs anglophones.

M. Allen: C'est un bon point, car les jugements des tribunaux changent, historiquement, d'une époque à une autre, sur les mêmes questions, même à l'égard de la constitutionnalité des écoles séparées. Aussi, les jugements des tribunaux sont basés dans une certaine ambiance culturelle de la communauté anglophone. Est-ce vrai que cette ambiance existe aussi dans la communauté francophone? Donc, est-ce que la constitutionnalité est la même chose pour les anglophones et pour les francophones?

Mme Landry-Kennedy: Elle devrait l'être, Monsieur.

M. Allen: C'est un point très important.

Mme Landry-Kennedy: Oui.

Mme Yamasaki: Je crois aussi que nos doutes ont été confirmés. Si on se réfère à ce qui a été vécu du côté du Québec il y a deux ans, lorsqu'on avait décidé de regrouper les conseils scolaires selon la langue et puis le projet est tombé à l'eau, là maintenant c'est remis sur la table, et on sent déjà qu'il y a un gros tiraillement. Alors, on ne sait pas non plus où ils vont en venir de leur côté, puis ce sont les mêmes circonstances.

M. Allen: Le jugement de 1984 de la Cour d'appel de l'Ontario a dit que le droit des francophones à la gestion de leurs écoles n'est limité par aucune obligation de s'accorder avec les structures actuelles des conseils scolaires. Donc, c'est un point de vue un peu différent de la décision de la Cour suprême du Canada concernant les écoles séparées, et il est très important, je pense, de mettre l'accent sur le jugement de 1984.

M. Ferrand: Donc, jusqu'à un certain point vous partagez nos inquiétudes. Ce n'est pas tellement clair.

M. Allen: Oui. Merci.

M. le Président: Y a-t-il d'autres questions? Non? Dans ce cas, mesdames et messieurs, je vous remercie beaucoup. C'était très intéressant. Merci.

Ladies and gentlemen of the committee and others, in a moment I will ask for a motion to adjourn. We will meet again here tomorrow in this room at 9:30. Our meetings will continue throughout the day.

Mrs. O'Neill: Mr. Chairman, I wonder if it is necessary to make a motion. There are three briefs that I would like translations of. Is that going to be done automatically, or do we need a motion of the committee?

Mr. Chairman: Everything that was read into the record will be translated and will be available to us next week.

Mrs. O'Neill: Everything read into the record. I guess the brief that I am particularly interested in that really was not read into the record is this one from the French-language education council of the Carleton Roman Catholic School Board. It was very quickly summarized by Carmen Gervais, and I feel there are an awful lot of points in here that I would like to consider. I am sorry, she did provide an English translation. It is the French-language education council of the Carleton Board of Education one that I am suggesting.

Interjection.

Mrs. O'Neill: Oh, you have a translation, Mr. Jubainville?

Mr. Chairman: Yes. That is it there.

Interjections.

Mrs. O'Neill: No, CBE, your own.

Mr. Chairman: OK. Also, I do not think we do have the money at the moment to translate those things. Do you have enough?

Mrs. O'Neill: OK. Well, I guess I do.

Mr. Chairman: Again, to the members of the committee, I might say that I was thinking of suggesting that tomorrow afternoon that we have our researcher highlight the main features of the transcript for us. That is something we could perhaps discuss tomorrow.

Mrs. O'Neill: Thank you very much. OK. We can even get copies, then.

Mr. Allen: Mr. Chairman, will our researcher not in any case be compiling a list of the major proposals and observations that have come from all of the briefs, anyway, so that we will automatically get that through that process?

Mr. Chairman: That is sufficient, then?

Mrs. O'Neill: OK, that is great.

Mr. Chairman: Yvonne, you are OK now?

Mrs. O'Neill: Yes, I am OK now.

Mr. Chairman: Ladies and gentlemen of the committee, are we comfortable with the arrangement for 9:30 tomorrow morning? OK.

The committee adjourned at 5:57 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON

THURSDAY, MAY 26, 1988

Morning Sitting

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitutions:

Beer, Charles (York North L) for Mr. Tatham

Sterling, Norman W. (Carleton PC) for Mr. Cousens

Clerk: Carrozza, Franco

Witnesses/Témoins:

From the Ministry of Education:

Ward, Hon. Christopher C., Minister of Education (Wentworth North L)

De l'Association des enseignantes et des enseignants franco-ontariens:

Hallé, Jacques, président

Colyer, Thérèse, présidente, unité d'Ottawa

Schryburt, Jacques, secrétaire général

Individual Presentation:

Anderson, Roberta B.

From the Carleton Board of Education:

Hansen, Hal, Chairman

MacLennan, Lyle K., Director of Education and Secretary

Jubainville, Raymond, secrétaire administratif, Conseil de l'enseignement en langue française

Labrosse, Diane, présidente, Conseil de l'enseignement en langue française

De l'Association française des Conseils scolaires de l'Ontario, région 1 (Est):

Gervais, Carmen, présidente

Gérin, Odile, directrice générale

Individual Presentation:

Legendre-McGuinty, Jacqueline

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, May 26, 1988

The committee met at 9:37 a.m. in the ballroom of the Skyline Ottawa.

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
(continued)

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON
(suite)

Consideration of Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Etude du projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

Mr. Chairman: This is the standing committee on social development. We are conducting hearings on Bill 109. Before we begin, I would mention to you that the interpretation receivers are there and that the English channel is channel 7 and the French channel is channel 8.

I would point out to all concerned that we regret, because of the interest in this issue, that each delegation has approximately half an hour, which includes the time for questions, so we would be grateful if the groups concerned would bear that in mind.

The first group, and I would be grateful if they would come forward, is l'Association des enseignantes et des enseignants franco-ontariens. I would be grateful if, before you begin, each of you would repeat your names into one of the microphones for the benefit of the translators and Hansard.

ASSOCIATION DES ENSEIGNANTES ET DES ENSEIGNANTS FRANCO-ONTARIENS

Mme Colyer: Bonjour, messieurs, mesdames. Thérèse Colyer, d'Ottawa secondaire public.

M. le Président: Merci beaucoup.

M. Hallé: Jacques Hallé, président de l'Association.

M. Schryburt: Jacques Schryburt de l'Association des enseignantes et des enseignants franco-ontariens.

M. le Président: Je vous remercie.

Mme Colyer: L'Association des enseignantes et des enseignants franco-ontariens regroupe quelque 5650 personnes qui oeuvrent au service des écoles élémentaires et secondaires de langue française dans la province de l'Ontario.

Mr. Campbell: Mr. Chairman, the translators indicated that they have some difficulty with the speed of the presentation. If it is possible to slow it down a bit so that the translators can keep up, we would appreciate it.

Mr. Chairman: They do have copies of the brief today.

Mme Colyer: Fondée en 1939 et incorporée en 1943, l'AEFO a été désignée en 1944 dans la Loi sur la profession enseignante comme membre à part entière de la Fédération des enseignantes et des enseignants de l'Ontario. Présentement, on retrouve des membres de l'AEFO dans les écoles élémentaires et secondaires catholiques et dans les écoles élémentaires et secondaires publiques.

Depuis ses origines, l'AEFO a poursuivi des programmes visant à améliorer l'éducation en langue française des élèves francophones. Au milieu des années 70, elle s'est engagée, de concert avec d'autres associations provinciales francophones, à faire reconnaître le droit des francophones à gérer leurs propres établissements scolaires.

L'AEFO est donc heureuse de se présenter devant le Comité permanent des affaires sociales, chargé d'étudier le projet de loi 109 visant à donner à la communauté francophone d'Ottawa-Carleton le plein contrôle de son avenir éducatif par l'établissement d'un conseil scolaire de langue française.

Notre joie est quand même limitée par la découverte que l'ensemble des francophones de l'Ontario devront patienter quelques années encore avant de pouvoir jouir pleinement d'un droit aussi fondamental à la survie de la culture française en Ontario. Ce commentaire est d'autant plus important qu'il nous force à considérer le projet de loi 109 comme un modèle qui pourrait servir ailleurs dans la province.

Dans son ensemble, le projet de loi 109 est bien structuré. Il est le résultat de plusieurs années de réflexion et de consultation. Le processus de consultation a permis à l'AEFO de faire valoir son point de vue à plusieurs reprises. Le projet de loi 109 touchera environ 1000 enseignantes et enseignants - je dis bien 1000 - de langue française. Ces membres de l'AEFO sont regroupés présentement en sept unités distinctes selon les conseils scolaires et les paliers. Pour assurer qu'il y aura congruence entre les positions prises par l'Association et les opinions de ses membres, un comité interunités a été formé pour appuyer les démarches de l'Association.

L'Association est reconnaissante au ministère de l'Education pour la disponibilité de ses employés, qui ont participé à de nombreuses rencontres, qui ont écouté ce que les enseignantes et les enseignants avaient à dire et qui ont intégré dans le projet de loi la majeure partie de nos revendications.

Il n'est pas de notre intention de commenter chaque article de la loi puisque, dans l'ensemble, elle satisfait nos besoins. Nous nous attarderons plutôt aux articles ou aux concepts qui continuent à nous préoccuper.

Les domaines de compétence: L'Association croit que, dans l'ensemble, la répartition des domaines de compétence entre le conseil plénier et les sections garantit les droits accordés aux conseils des écoles séparées par l'article 93 de l'Acte de l'Amérique du Nord britannique. Les dispositions 4(1)16 et 17, traitant des services d'orientation et du perfectionnement professionnel des employés, devraient, selon nous, faire partie des questions qui pourraient être mises en commun. On ne devrait pas fermer la porte à la collaboration et au partage entre les sections dans des domaines aussi importants.

En permettant aux sections de mettre en commun les services d'orientation et le perfectionnement professionnel des employés, on éviterait

le dédoublement des ressources humaines et financières. Nous vous demandons donc d'amender le paragraphe 4(4) afin de permettre à la section publique et à la section catholique de décider, par voie de résolution majoritaire des deux sections, de transférer au conseil plénier une partie ou la totalité des services reliés à l'orientation et au perfectionnement professionnel.

Donc, la recommandation 1: que le paragraphe 4(4) du projet de loi 109 soit amendé pour faire aussi référence aux dispositions 4(1)16 et 17.

M. Hallé: Bien chers amis, nous allons passer à une section qui nous est quand même très intéressante. C'est la partie traitant les finances.

Il est essentiel que le conseil scolaire de langue française ait accès à des ressources financières suffisantes pour lui permettre d'offrir l'ensemble des programmes et des services requis pour assurer un enseignement de qualité aux élèves de langue française. Cette qualité doit être égale à celle offerte aux anglophones, et cela dans des établissements comparables et équivalents. C'est le sens qu'il faut donner à l'article 23 de la Charte des droits et libertés. Il importe, donc, que le projet de loi 109 contienne des garanties à cet effet.

Il est regrettable que le gouvernement n'ait pas choisi de mettre en commun, sur le territoire de la municipalité régionale d'Ottawa-Carleton, les sommes générées par l'évaluation commerciale et industrielle. Ces sommes, redistribuées au prorata du nombre d'élèves dans les cinq conseils scolaires, auraient offert une garantie de base. La mise en commun de l'évaluation commerciale et industrielle assurerait aussi plus d'équité dans les revenus des sections catholique et publique. L'Association comprend que le gouvernement ne veuille pas faire une exception pour la région d'Ottawa-Carleton, et lorsqu'il y aura une réforme des modalités de financement des conseils scolaires, le conseil scolaire de langue française en profitera pleinement.

Depuis de nombreuses années, comme vous le savez, l'Association des enseignantes et des enseignants franco-ontariens invite le gouvernement à corriger les inégalités flagrantes du régime actuel de financement de l'éducation en Ontario. L'AEFO répète qu'il est inacceptable, dans notre province, de maintenir en place un régime qui crée deux catégories de conseils scolaires en matière de financement: des conseils scolaires riches et des conseils scolaires pauvres. A la base, ces inégalités sont dues, d'une part, aux limites du droit d'accès à l'évaluation commerciale et industrielle et, d'autre part, aux disparités dans le partage de ces ressources entre les divers conseils qui y ont accès.

Dans le présent projet de loi, l'article 18 de la partie IV nous inquiète particulièrement. Le droit d'une corporation à verser des taxes au conseil scolaire de langue française est limité <au rapport qui existe entre le montant des actions détenues par des personnes admissibles et le montant total des actions> de la corporation. Ce concept reprend celui qui est énoncé au paragraphe 126(5) de la Loi sur l'éducation se rapportant aux écoles séparées. A notre avis, ce concept, introduit dans la Loi sur l'éducation en 1913, est dépassé.

Tel qu'il est, le projet de loi 109 pose de nombreuses difficultés en ce qui concerne les taxes des corporations. Le projet de loi devrait être amendé de façon à laisser aux corporations le droit de décider de partager leurs taxes entre le conseil scolaire de langue française et le conseil scolaire de langue anglaise selon le nombre d'élèves dans chacun des conseils.

Il sera extrêmement difficile d'identifier la fraction de l'évaluation totale d'une corporation en fonction des actions détenues par des personnes admissibles. Les corporations verseront massivement leurs taxes aux conseils scolaires de langue anglaise. Pour les élèves de la section publique du conseil scolaire de langue française, cela constitue une forme de régression dans la structure proposée par le projet de loi 109. La proportion des taxes qui seront transférées au conseil scolaire de langue française sera inférieure à la proportion du nombre d'élèves. Les conseils scolaires de langue anglaise se retrouveront donc avec plus de ressources par élève. Ils seront donc plus riches et pourront plus facilement encore dépenser au-delà des plafonds; d'où l'importance de garantir dans le projet de loi l'accès à des ressources financières équivalentes pour le conseil scolaire de langue française. Et voilà la raison de la recommandation 2.

Nous sommes conscients que le gouvernement étudie le rapport Macdonald et qu'il entend prendre position sur les recommandations de ce rapport. Un des éléments à l'étude est celui de la mise en commun de l'évaluation commerciale et industrielle. L'AEFO note que des recommandations à cet effet avaient au préalable été soumises au gouvernement dans le rapport de la commission Matthews et dans le rapport Jackson sur la baisse des effectifs. Ces trois rapports ont tous confirmé les inégalités du partage actuel de l'évaluation commerciale et industrielle, mais jusqu'à maintenant, les gouvernements se sont satisfaits d'attendre et d'étudier.

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Advenant que le gouvernement ne soit pas disposé à profiter de l'occasion qui lui est offerte pour corriger une situation tout à fait injuste, l'AEFO demande qu'une mesure intérimaire soit initiée afin de protéger le conseil scolaire de langue française. L'AEFO verrait comme geste positif la mise sur pied d'un programme temporaire particulier semblable à celui qui existait en Ontario de 1965 à 1969. Ce programme, connu sous le nom de <corporate tax adjustment program>, visait à pallier les inégalités causées par la distribution non équilibrée de l'évaluation commerciale et industrielle.

L'AEFO fait, donc, la recommandation 3: qu'un régime particulier de subventions soit initié pour le conseil scolaire de langue française d'Ottawa-Carleton afin d'assurer au nouveau conseil un revenu équivalent au revenu qui lui reviendrait si ce conseil avait une évaluation commerciale et industrielle par étudiant égale à celle des conseils scolaires de langue anglaise, selon le taux d'imposition établi par des conseils scolaires de langue anglaise.

L'Association reconnaît que le paragraphe 48(3) permettra au gouvernement d'accorder à la section publique et à la section catholique des subventions spéciales et temporaires. Il faudrait que le projet de loi permette aussi au gouvernement d'accorder des subventions spéciales au conseil scolaire de langue française, qui, inévitablement, fera face à des frais initiaux. Alors, une subvention de démarrage est essentielle. De plus, il faudrait stipuler dans la loi que des subventions spéciales et temporaires seront versées aux sections ainsi qu'aux conseils scolaires de langue française, et que ces subventions seront suffisantes pour assurer l'ensemble des programmes et services qui étaient disponibles aux élèves francophones au moment de l'établissement du conseil scolaire de langue française.

Recommandation 4: que le paragraphe 48(3) de la partie IX soit amendé afin de se lire comme suit:

<(3) Durant chaque année fiscale, le lieutenant-gouverneur en conseil devra prévoir le paiement à la section publique ou à la section catholique ou aux deux, des subventions compensatoires afin d'assurer que le conseil scolaire de langue française et ses sections puissent offrir des programmes et des services équivalents à ceux offerts au sein des conseils scolaires de langue anglaise de la région d'Ottawa-Carleton.>

Recommandation 5: que le paragraphe 48(3) soit amendé afin d'y ajouter l'alinéa (3)a), comme suit:

<(3)a) En plus des subventions prescrites au paragraphe 48(3), pour chacune des cinq premières années d'opération du conseil scolaire de langue française d'Ottawa-Carleton, le lieutenant-gouverneur devra prévoir le paiement au conseil scolaire de langue française des subventions de démarrage afin d'assurer que la mise en oeuvre du conseil scolaire de langue française dans la région d'Ottawa-Carleton n'occasionne aucun frais supplémentaire aux contribuables de ce conseil.>

L'AEFO est d'avis que l'engagement du gouvernement à assurer le plein financement du conseil scolaire de langue française est une condition sine qua non à l'appui des enseignantes et des enseignants envers le projet. Et je dois vous dire qu'en mars 1988, lors de notre assemblée annuelle, les délégués de l'Association ont adopté la résolution suivante:

<Qu'advenant l'absence de garanties assurant le plein financement du conseil scolaire de langue française dans Ottawa-Carleton, l'AEFO et les unités impliquées réclament que le projet d'un conseil scolaire de langue française dans Ottawa-Carleton soit reporté jusqu'à ce que le gouvernement assure le financement complet du conseil scolaire de langue française.>

L'AEFO invite les membres du Comité permanent des affaires sociales à modifier la loi pour qu'elle contienne ces garanties.

Mme Colyer: La mutation des employés: L'alinéa 66(1)b) prévoit que les conseils scolaires de langue anglaise auront à décider du nombre de postes que le conseil scolaire de langue française aura à pourvoir. Cela nous semble une anomalie. Cette responsabilité doit être exclusive au conseil scolaire de langue française.

Donc, la recommandation 6: que l'alinéa 66(1)b) soit radié.

La fréquentation scolaire: Dans sa forme actuelle, le projet de loi 109 ne permet pas à certaines familles qui ont immigré récemment au Canada et qui ne sont ni de langue française ni de langue anglaise, de choisir d'éduquer leurs enfants en langue française et de contribuer au conseil scolaire de langue française. Le nouveau conseil scolaire doit pouvoir offrir, à l'intérieur de sa structure, des services à ces familles qui choisiraient de s'intégrer à la culture française. Le Comité devrait étudier la possibilité d'amender la loi pour permettre à ces familles de le faire.

En conclusion, les membres du Comité pourront sûrement constater que la préoccupation majeure de l'Association des enseignantes et des enseignants franco-ontariens face au projet de loi 109 est liée au financement. Dans l'ensemble, nous sommes satisfaits du projet, mais nous voulons que la loi soit plus spécifique dans ses garanties d'accès à des ressources financières équitables. Il est difficile de demander à la communauté francophone de simplement faire confiance au gouvernement.

Le droit des francophones à une éducation de qualité égale à celle offerte aux anglophones a été reconnu par les tribunaux lors de la référence constitutionnelle de 1984 ainsi que dans le cas Marchand. Tout projet de loi doit réaffirmer les droits reconnus par la Charte des droits et libertés. Cela évitera des procédures judiciaires.

M. le Président: Je vous remercie. Y a-t-il des questions?

M. Allen: Merci. C'est un plaisir d'avoir le mémoire de l'Association des enseignantes et des enseignants franco-ontariens. C'est un mémoire qui a précisé très exactement les possibilités que nous, membres du Comité, avons en ce qui a trait aux divers amendements touchant le financement, etc. J'estime beaucoup votre avis sur ces sujets. Il est vraiment impossible de demander simplement que vous fassiez confiance au gouvernement et c'est tout. Nous avons besoin de votre avis sur tous les aspects de ce projet de loi.

Comme vous le savez, dans le passé, le problème de la mise en commun des impôts industriels et commerciaux partout dans la province était que le gouvernement n'avait pas donné l'assurance que tous les fonds seraient réservés exclusivement au domaine de l'éducation lui-même. Mais je pense que pour la mise en commun de ces impôts régionaux, il est possible d'éviter ce problème. Comme vous l'avez suggéré, il est possible de prendre tous ces impôts régionaux et de les répartir en proportion du nombre d'étudiants dans les conseils scolaires de la région. Pour moi, il faut également assurer aux conseils qui bénéficient maintenant de ces impôts que l'impact sera uniquement pour la période de transition à un nouveau régime de financement.

Mais en ce qui concerne une question difficile que nous avons beaucoup discutée dans le contexte du projet de loi 75, n'avez-vous aucune suggestion à l'égard du problème de la fréquentation scolaire des immigrants récents, ou est-ce un problème dont nous ne discuterons jamais à l'avenir?

M. Schryburt: Nous aussi, nous avons discuté assez longuement de ce problème et nous avons essayé de trouver une formulation, mais nous n'avons pas pu trouver de formulation à vous proposer. C'est un problème réel. Ces personnes qui viennent de l'extérieur qui choisissent de venir au Canada qui s'installent en Ontario voudraient s'associer à la culture francophone en fréquentant les écoles françaises. Le projet de loi ne leur permet pas de le faire, mais on n'a pas vraiment pu trouver de formulation à vous proposer qui le leur permettrait, sans créer d'injustices flagrantes envers la communauté anglophone.

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M. Allen: Oui, c'est important, car c'est une occasion de promouvoir la croissance de la communauté francophone et aussi la base de recensement et les impôts pour le conseil homogène francophone, à l'avenir. Je reconnais les difficultés. Merci beaucoup.

Mrs. O'Neill: If I may just follow up on that particular concern you have, is it not possible for a family that immigrates to this country to present themselves at a French-language school, go through an admissions committee and thence become pupils of that school and thence become eligible to be electors? I know it is a back-door approach and I know it only pertains to people who have school-age children, but the paragraph on page 11 seems to indicate that is not possible, and I thought it was possible.

M. Schryburt: Il y a cette possibilité pour les gens qui ont des enfants et qui réussiraient à les faire inscrire par le biais d'un comité d'admission, vous avez raison, mais c'est la seule possibilité.

Mrs. O'Neill: OK, so that is one way, and you see it as the only way. Is that correct?

M. Schryburt: Ce qu'on dit, c'est que les règlements devraient permettre à ces gens de choisir d'être contribuables francophones et d'avoir accès directement aux écoles de langue française. Vous avez raison: par le biais d'un comité d'admission, actuellement, ces gens pourraient être admis.

Mrs. O'Neill: OK, thank you. I would like you to be a little more explicit about your concerns on subsection 66(1). I have an idea of what you may mean, but I would like you to talk to that if you would, please.

M. Schryburt: Madame O'Neill, la préoccupation est simplement que, tel qu'il est présentement formulé, cet article-là prévoit que la détermination du nombre de personnes sera faite à la fois par le conseil scolaire de langue anglaise et par le conseil scolaire de langue française, et ça nous paraît une anomalie. Nous pensons que c'est le conseil scolaire de langue française qui devrait être en mesure de déterminer ses nombres.

Mrs. O'Neill: OK. I suppose you understand that the intent behind this is that at the moment these people are all employees of boards that have two panels. I thought, and my interpretation of this clause was, that it would protect teachers so that they would have the opportunity, if not to be employed by the new board, then to stay with the board where they were. They would have this as a joint consultation between the anglophone and francophone panels so that everyone would know the status of each teacher in the board. Likely a lot of this would be done by superintendents, but boards would make the final decision on numbers.

I guess what I am suggesting is, do you not want that protection? I presume you would still want talking to go on between the two panels. I guess this is why when you suggest that the whole thing be erased, I would prefer that we be suggested some wording that would not erase the possibility of very good negotiations going on to protect teachers' contracts, which I think is the intent.

M. Schryburt: La prétention, Madame O'Neill, est simplement de radier l'alinéa 66(1)b), non pas l'alinéa 66(1)a), et à ce moment-là, de laisser le conseil de langue française déterminer lui-même le nombre de postes qu'il a à pourvoir.

Mrs. O'Neill: OK.

Mr. Sterling: I was particularly interested in your concern about the financing. I am not only concerned about the new board being properly financed, I am also concerned that the boards from which your students are coming be able to maintain the level of quality of education that they have been able to provide those students with. I just wonder how far you are willing to push this particular requirement. It seems to be a major part of your brief. Yesterday we heard Ms. Labrosse from the Carleton Board of Education say, "Thanks, but no thanks." Are you significantly concerned about guarantees being put in this legislation to the point of saying we should delay it until those guarantees are there?

M. Schryburt: Monsieur le Président, je voudrais réagir en disant que l'important pour nous, c'est que le conseil scolaire de langue française soit financé d'une façon appropriée qui permette de maintenir des programmes et des services qui sont offerts à la population présentement ou qui lui seront offerts dans les prochaines années, de maintenir des services équivalents à ce qui est offert à la population de langue anglaise.

D'après nous, ces garanties existent dans la Charte des droits et libertés et c'est déjà reconnu par les tribunaux. Nous voudrions que le projet de loi soit amendé pour faire référence à ces garanties ou pour nous garantir que les fonds seront disponibles pour le conseil scolaire de langue française. Nous ne voulons pas nous retrouver, en 1989 ou en 1990, devant les tribunaux pour essayer de faire reconnaître notre droit d'avoir plus de fonds ou les fonds requis pour faire fonctionner notre conseil francophone. Il est important que ces garanties soient inscrites dès la présentation de la loi. S'il n'est pas possible de les inclure dans la loi, il nous faudrait la preuve que les règlements qui vont accompagner la loi nous donnent ces garanties.

Les enseignantes et les enseignants ne veulent pas d'un conseil scolaire de langue française qui n'a pas ces garanties. Nous pensons qu'il n'est pas nécessaire de reporter le projet de loi pour nous donner ces garanties. Il est possible de donner ces garanties en modifiant la loi, en utilisant l'une ou l'autre des recommandations que nous vous proposons, ou encore, en nous présentant les règlements qui accompagneront la loi et qui, eux, pourraient nous donner ces garanties. La garantie que nous recherchons, c'est d'avoir suffisamment de subventions directes du gouvernement pour nous permettre d'offrir des services de la même qualité que celle des services qui sont offerts ou seront offerts aux élèves anglophones dans la région.

Mr. Sterling: OK. I have one other question. One of the problems that I think we face in the Ottawa-Carleton area is that many families are not unified, in terms of the want of two parents, one being originally a francophone and the other one being an anglophone. Sometimes the children are going off in different directions in terms of their need of schooling. I have run across this problem in my constituency on a number of occasions. Quite frankly, the parents are confused at this stage of the game as to whom they direct their tax support towards. Do they direct it towards the francophone board? Do they direct it towards the separate board? Do they direct it to the public board?

We have, in effect, within our English boards two choices as well: We have French immersion programs and we have the English program. So really, people in Ottawa are being given five choices as to where they may or may not send their children, providing they have other qualifications there. What would you say to a suggestion that parents or property owners could split their support for assessment purposes? This is not an unreal problem.

M. Schryburt: Nous serions favorables, Monsieur Sterling, à une telle proposition. Vous avez raison: il y a des situations qui sont un peu cocasses, un peu difficiles à vivre dans les circonstances actuelles, où les gens doivent choisir où ils paieront leurs taxes. Si on permettait aux propriétaires de partager leurs taxes, ce serait certainement quelque chose d'utile.

M. le Président: Madame Colyer, Monsieur Hallé, Monsieur Schryburt, je vous remercie pour une présentation très claire. Merci beaucoup.

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The next presenter is Roberta Anderson, trustee. Ms. Anderson, do you prefer Mrs. Anderson or Ms.?

Ms. Anderson: Ms.

Mr. Chairman: Ms. Anderson. First of all, I point out that you have 15 minutes in the program. This is not to discriminate, but our rule of thumb was that individuals would have 15 minutes and groups would normally have 30 minutes. Feel free, but I hope you will bear our program in mind.

Ms. Anderson: I will.

Mr. Chairman: The second thing is, would you state your name? Also, I have here only "trustee." I am not clear which board you are a trustee for and so on. If you could, state that clearly into the microphone for the benefit of the translators and Hansard, please.

ROBERTA ANDERSON

Ms. Anderson: My name is Roberta Anderson, and I am a trustee with the Ottawa Roman Catholic Separate School board. It is nice to see some familiar faces here in front of me from Bill 30 days, as well as some familiar faces from the Ottawa-Carleton region itself.

Mr. Chairman and members of the committee, this is my first opportunity to have any formal input in the process of the establishment of a French school board in the Ottawa-Carleton region. This brief attempts to highlight some of my concerns with Bill 109 as a Catholic ratepayer, as a trustee for 14 years in the Ottawa Roman Catholic Separate School Board and as a provincial director for 10 years on the board of directors of the Ontario Separate School Trustees' Association.

The bill is a heroic piece of legislation in many ways and, for that, its authors are to be congratulated. On the other hand, it reflects an almost total absence of input from the English boards directly impacted by it and of the individual and/or collective wisdom of the trustees who sit on these English boards.

At the outset it would be useful for you to know that the English trustees of the four area boards met very recently to discuss for the first time the impact of Bill 109. We accomplished more in two hours of open and honest dialogue than the official impact committee appears to have done in its complete history. The impact committee, in fact, prevented productive discussion by those experiencing the impact—that is to say, the English sections of the boards—by purporting to be the forum for discussion and action, a role which it could not fulfil, because of the differing vested interests of the two language groups of which its membership was composed.

This is graphically illustrated by the fact that the impact committee, theoretically created for this very purpose, is not presenting a brief at these hearings. I would recommend that any future French board have an impact committee composed of all English trustees of the jurisdiction the French board intends to cover.

It should be clearly understood that I personally support the independent provision of French education in Ottawa-Carleton. French education

should not, however, be provided in a way which threatens the constitutional rights of Catholics to govern Catholics for educational purposes. In Bill 109, section 3, referring to a Catholic sector, a public sector and a full board, poses such a threat, as does section 52, which proposes a common executive director. The only structure that will unequivocally fulfil Catholic constitutional rights is two separate boards, a French Catholic board and a French nondenominational board.

Allow me to illustrate just one of the pitfalls. The Roman Catholic sector has exclusive jurisdiction for the planning, establishment and financing of educational units. At the same time, it is under the exclusive jurisdiction of both sectors to allocate facilities. If the Catholic sector determines that there are enough Roman Catholic elementary students, for example, to warrant a Catholic secondary school in a particular region of the jurisdiction, the planning and financing of such an educational unit is to no avail, for it is difficult to establish a school in thin air. One must have a facility. The public sector, then, has actual control over the establishment of such a school if it refuses to allocate either a facility or a site for such a facility. To suggest that Roman Catholic educators submit to such control is to ask that they forgo their constitutional rights.

This erosion of rights continues in subsection 4(4) which allows the transfer of exclusive jurisdiction to the full board. Transfer of rights under paragraphs 4(1)19, 4(1)20 and 4(1)24 would infringe on existing Catholic rights. This is elaborated upon in subsection 76(4), which refers to the transfer of collective bargaining rights. Collective bargaining touches the classroom through, among other things, working conditions. The role of a teacher in the classroom of the Catholic school system cannot constitutionally be determined by non-Catholics.

Attempting to resolve disputes through the Languages of Instruction Commission of Ontario or by an arbitration board is to exacerbate the problem of removing decisions about the provision of Roman Catholic education from the Roman Catholic representatives elected for that purpose.

Public educators in this region have already indicated an interest in extending the Bill 109 model to the English community. English Roman Catholic educators throughout the province, as well as some French Roman Catholic educators, recognize the threat such a model presents to their constitutional rights and shall not ignore it. None are more aware of these pitfalls than those of us in Ottawa who have experienced first hand over many decades the inevitability of intrusion into the autonomy of one group by the other when competing entities share a jurisdiction. I can give examples of that later if you wish.

Bill 109 indicates that residents divided between public and separate affiliation shall have their taxes directed to the public system. Mr. Sterling referred to this earlier. If we are indeed equal partners in the provision of public education in Ontario, whether Roman Catholic or nondenominational, why are public ratepayers given preference over Roman Catholic ratepayers? Why are taxes not split?

Ironically, they cannot presently be divided at the residential level, where it would be a simple task to do so in our computerized world, but they can be divided in the business and commercial sector where identifying Roman Catholic stockholders and implementing such legislation is virtually impossible, making the legislation itself an embarrassment to any government.

To see it reiterated in Bill 109 is regressive and to see it extended to give preference to English ratepayers over French ratepayers adds insult to injury. Seventy per cent of our ratepayers have no children in school. As citizens of Ontario, they and all ratepayers warrant the right and the dignity of directing their taxes to reflect their religious and/or linguistic commitment as they see fit.

As an English-speaking Roman Catholic ratepayer, I object to having privilege over a French Roman Catholic ratepayer whose ability to direct taxes to the school system of her or his choice should be equal to my own. When the government of Ontario deals equitably with the whole question of business and commercial taxes, whether the question be French-English, Catholic-nondenominational or rural-urban, Ontario will be able for the first time to provide truly equal educational opportunity provincially.

Section 73 of this bill deals with what is severally know as sick-leave gratuity, service gratuity and retirement gratuity. Whatever its title, subsection 3 assumes that there is only one resolution to the fulfilment of this financial obligation to our employees, that being the long-term retention of the bulk of the debt by the English boards.

The unfunded liability of this gratuity was accrued by each board on the assumption of a particular tax base and grant base to meet the financial demand as it came due annually. Excuse me, Mr. Chairman, but could I have the attention of the committee.

Mr. Chairman: Please carry on.

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Ms. Anderson: Thank you. In the case of the Ottawa Roman Catholic Separate School Board, we assumed there would be ongoing grants for approximately 15,000 students and the tax base of the Catholic community of Ottawa, both English and French, to meet these demands.

Overnight we will be losing roughly one third of our student population and the grants attached to it, as well as all of the French Catholic tax base, yet the English Catholic board is expected to finance this huge liability, in excess of \$10 million, almost exclusively.

The situation is exacerbated at our board by the fact that while there are only about 350 French teachers and approximately 600 English teachers, almost 50 per cent of the gratuity debt accrues to the French teachers due to conditions of seniority.

Recognizing that the gratuity is tied directly to the accumulation of sick leave and is tracked and recorded for each individual teacher, the Ottawa Catholic board and the board of education developed a process in their personnel transfer agreement related to Bill 30 which gradually folds responsibility into the receiving board over a five-year period, recognizing the accumulation of sick leave as it reaccrues with the receiving board. It would be useful for the committee to read the pertinent section of the personnel agreement between the two boards, which applies to both French and English personnel.

While I am not suggesting that this is the single option, I recommend that the legislation be made flexible to allow optional agreements to be reached between parties. If the debts attached to buildings are to be

transferred, surely those attached to people cannot be treated in a totally dissimilar fashion.

Section 61 refers to the transfer of occupied school sites. While the legislation attempts to be flexible and should be commended for this, it does not take into account the complications created by the interlocking of Bill 109 with Bill 30. Negotiations between the two Ottawa boards under Bill 30 have been complex for both language groups. While Belcourt, for example, a secondary school owned by the Ottawa Board of Education, has been on the table as part of the English negotiations, it is presently occupied by French students from the Catholic board. It is not space, but politics which keeps the French students in this school while negotiations continue.

Under the legislation, depending on its interpretation, the French board will, by default, end up with a plethora of French secondary facilities, including Belcourt. As a result of the present status of negotiations between the French sectors of the Ottawa Board of Education and the Ottawa Roman Catholic Separate School Board under Bill 30. It has never been the expressed intent of either board that Belcourt be a permanent French secondary facility. The legislation should not impose such an unintended transaction and should reflect the special status of leased property, recognizing the intended temporary nature of a lease.

Section 62 of the bill, referring to additional assets and reserves, is much more complex than it appears to be. While, on the one hand, the bill must once again be commended for encouraging resolution of section 62 at the local level, on the other hand, it leaves the English sector of the Ottawa Catholic board caught on the horns of a dilemma.

In order to fulfil the intent of section 62, it is necessary that the English sector brainstorm, plan and develop strategies to enable it to negotiate with the French sector or at the very least to enable it to decide upon assets and reserves to be transferred to the Roman Catholic sector of the French board as per subsection 62(5).

As a resource to both the English and French sectors of the board, our director of education in his official capacity has until now been deeply involved in the deliberations of both language groups. Factually, the director of education was one of the members of a group appointed by the ministry to study the feasibility of a French-language board for Ottawa-Carleton and, subsequently, has been a strong promoter of the French board. This has gained him well-deserved respect and recognition from both language groups. More recently, the director has supervised and directed the development of, and presented to the board of trustees on a number of occasions, various formulae and plans for the distribution of the assets of the board. None of these was acceptable to a majority of the English trustees.

The English trustees require professional assistance from both outside and within the board, professional assistance which has as its priority the rights, welfare and future of the existing Roman Catholic school system of Ottawa. Many of us do not see how the director of education can give us the professional assistance we require which reflects this commitment and give the same commitment to the rights and welfare of the new French board at meetings of the French sector. The majority of English trustees believe the director of education should remove himself from section 62 meetings and appoint, for purposes of the English sector at least, the superintendents of the English sector to act as a resource in these deliberations with their confidentiality duly protected.

The director of education does not agree with the trustees of the English sector and, therefore, members of the committee, we are prevented from addressing section 62 unless we do so with no professional assistance whatsoever from within our board. One option is to do nothing until the end of August, at which time the legislation informs us that the Languages of Instruction Commission of Ontario will do our thinking and our acting for us.

This is an option I believe to be unconstitutional in the long run and unacceptable in the short run. The Ottawa Roman Catholic Separate School Board, as is the case with the other three boards in the area, must continue and shall continue to provide education to the English community. We cannot have our legal obligations, indeed decisions regarding our very structure, usurped by an independently appointed commission.

We would like to fulfil our responsibilities as duly elected representatives of the English Catholic community. To that end, and with the hope of dealing with the issue discreetly, on May 2 an official letter went to the minister from the chair of the English sector requesting an immediate meeting to develop a process for us to deal with section 62 and resolve the dilemma. To date, I am not aware that this letter has been addressed. Until this matter is acted upon, the English sector is held at bay and prevented from dealing with section 62. I recommend that the committee encourage the minister to provide relief for the paralysis of the English sector of the Ottawa separate school board immediately through assistance in the development of an acceptable process for addressing section 62.

Finally, I would like to address the questions of time and money. The time lines for Bill 109, particularly section 62, are unrealistic. Most school boards close down except for a skeleton staff during the month of July. Also, appearances to the contrary, school board trusteeship is not recognized as a full-time occupation. Writers of the legislation are reminded that school board trusteeship is still considered to be a community service, not a vocation. Many trustees have other commitments, professionally, and obligations during much of the summer. As well, we do not as yet have access to pertinent factual information, such as the results of French ratepayers enumeration, which has a direct bearing on the deliberations of all parties. I recommend that the legislation provide more time flexibility at the local level in the implementation of the bill, particularly section 62.

In reference to financial support, it can be pointed out that under Bill 30 public boards are compensated to the tune of \$500 per pupil for those pupils who transfer to a Roman Catholic board. The need for this compensation for downsizing exists as well in the English boards, some of which are experiencing drastic downsizing overnight. I recommend that the legislation reflect the same sensitivity to this issue as does Bill 30.

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Local boards and their English sectors have accrued as well a number of one-time costs directly attributable to the establishment of the French board. These costs are all debits against the delivery of programs, services and adequate facilities to our students. I recommend that one-time costs be recognized by the ministry and that compensation be provided.

This has been a welcomed opportunity, however late in the game, to highlight some concerns with regard to Bill 109 and its implementation. The establishment of a French-language school board or school boards in Ottawa-Carleton is an important and historic event and must be accomplished with sensitivity to all members of the Ottawa-Carleton community.

We who live here are aware that legislation reflecting such sensitivity will more likely ensure the early and successful provision of French education to both Catholic members of the French community and those who wish to attend public schools. At the same time, there is an obligation to ensure the continuation of quality education in the English community. This includes protection of the rights of Roman Catholics of both language groups to an independent Roman Catholic school board.

I am sorry. I had a double page in here. I would like to read it because I think it is quite important. There is one additional sentence. I left it out of mine.

Bill 109 provides for temporary grants to the French-language board at the discretion of the Lieutenant Governor in Council. Neither the purpose nor the amount of these grants is specified. The degree of commitment this represents on the part of the ministry to the financing of the French board is unclear. Any and all assets transferred from the Ottawa Roman Catholic Separate School Board will go to the Roman Catholic section of the French-language board, which represents the students leaving our jurisdiction, as per school site transfers under subsection 61(8).

The whole matter of ministry intervention in making financial provision to the French board needs to be clarified before negotiations proceed. Alternatively, the Ministry of Education must become party to the negotiation process.

I am sorry I left that out. I have a number of recommendations and I will be pleased to answer any questions.

Mr. Chairman: I have Mr. Jackson and then Mr. Campbell.

Mr. Jackson: Ms. Anderson, you are speaking today as an individual trustee, not officially on behalf of your board?

Ms. Anderson: I am speaking as an individual trustee, Mr. Jackson.

Mr. Jackson: Did your board have an opportunity to make a presentation to the Roy committee?

Ms. Anderson: Our board made a presentation to the Roy committee, and because a number of the English trustees did not agree with the presentation that was made by a majority of the board, we also presented minority report.

Mr. Jackson: You personally did not have an opportunity to comment on the Roy committee. Is that not the point you are making really?

Ms. Anderson: I was party to the minority report and did have an opportunity through that report to comment on the Roy committee.

Mr. Jackson: OK. I just did not understand what you meant by this being your first opportunity to comment.

Ms. Anderson: I meant since the establishment of the planning committee, since the proposed legislation. I meant that, post-Roy committee, it has been my first opportunity.

Mr. Jackson: I notice in recommendation 2 you are suggesting that there be six school boards in the Ottawa-Carleton district. That is understood by your recommendation.

Ms. Anderson: Yes.

Mr. Jackson: At any point during the discussions you referred to, where in two hours you had achieved a tremendous amount of productivity, did you ever look at, I believe it is recommendation 8 with respect to downsizing compensation? Did you ever discuss the concept of amalgamating the Ottawa and Carleton separate school boards as a response to sort of a responsible tradeoff in terms of managing the smaller, total overall board structure?

Ms. Anderson: Mr. Jackson, the meeting was held in camera. I cannot divulge what we discussed, but I can divulge what we did not. We did not at any time discuss the possibility of amalgamating the boards in any combination of amalgamation.

Mr. Jackson: As a trustee responsible for public funds, do you have a reason as to why that has never been discussed?

Ms. Anderson: The amalgamation has been discussed at length over, I would suggest, more than a decade. I have been party to public meetings which have been held and the reasons for not amalgamating have changed over the years. At one time, the Carleton Board of Education did not want to be overwhelmed by the big Ottawa Board of Education, and maybe now the Ottawa board does not want to be overwhelmed by the big Carleton board.

One fact that I find very relevant is the difference in the philosophy and the difference in the offering of programs between the boards. I am speaking only for the Catholic programs now. In Ottawa, for example, all our English schools are bilingual. Our children study English half the day and French half the day, all of them, except for about five per cent.

In the Carleton board, they have an immersion program versus a regular program. We have a lot of differences, and so amalgamation would not be an easy thing to achieve. It would take another set of hearings to go through all the reasons why it would be good or bad.

Mr. Jackson: Thank you.

Mr. Campbell: By example or by discussion, because this is the first time this has been mentioned about informal discussions and trying to resolve this thing, I have always had a sense, as a former municipal politician, that the informal stuff is where the action is and that is what happens and where the work gets done. I guess that is really the thrust of the bill, to allow that local decision-making to happen. Whether or not the formal way that it is presented in the bill, the allowances in the bill, are there particularly, I think the point is made that the local people can solve their own local problems. I make that by way of comment.

Yesterday I spent some time dealing with what seems to be a really contentious issues. What I am concerned about is this whole question of retirement gratuities. You have clarified for me what I was trying to deal with yesterday as to the extent of the problem. I think it is still not insurmountable, so I will just comment on that and I will not ask you a question on it because I think you have given some examples.

The thing that does concern me quite a bit—and it has concerned me right through the whole hearing process—is the question of setting priorities. I guess the only way I can sum up is the whole question of saying that the reason you cannot do anything is that you have holidays. As a former municipal politician who had to spend a lot of time in the summer trying to deal with issues of the day, I guess more in sorrow than anything else, this is being put up as a major part of the brief and everybody has said that the holiday issue is in the way of a very important kind of deliberation.

I guess they feel very concerned that that would be a major part of anyone's brief. I do not want to say it is an excuse for nonaction or something, but I am really concerned about that, especially when you have supervisory officers who are on 12-month contracts and perhaps could take their holidays at some other time. Maybe there is more work for the trustees to do, but maybe it is compensated for by less work in another part of the year. I wonder if you can expand on that for me because, if I am in the public service, I am in the public service. I am not around a certain schedule trying to use holidays as a reason for not doing something, not trying to deal with something.

Ms. Anderson: I suggest that that particular item was not a major part of my presentation, but rather a minor one. The question of negotiating through the summer has a lot of little hooks in it. Although I agree that politicians should make themselves available, I am also aware that they do not. One thing about politicians is that you cannot force them to do anything. I am not speaking for myself. I am speaking through my knowledge of politicians and the fact that a lot of them simply would not be there.

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My major concern apart from that—and if this were the only concern, I would not have raised it—is with the staff. School board staff have to work hard in August because they are preparing for the upcoming school year and by the end of June they are wiped. If the school system cannot have a down month, as most boards do for the month of July, then they are not going to have an up year.

We are not only involved with Bill 109, which is an immeasurable trauma on our board, we are also involved with Bill 30, which is another severe trauma on our board. We are still involved with trying to work around Bill 75, and it is an extremely complex situation.

I am just suggesting that month, July, is precious to our staff and I will try to protect it.

Mr. Campbell: On the question of time, put it in perspective. Would you say the same thing if you had a negotiated contract and it was absolutely essential that you solved the contract problem with your teachers? If you had one, would you say that the same kind of parallel would happen? I think that as a trustee with the responsibility of educating kids, you would have a responsibility of staying at the bargaining table until you got a contract,

even if it was over the summer. I just draw that as a parallel. I guess that is the only conclusion I can draw.

Mr. McGuinty: I have a question for Ms. Anderson. On page 3, the last sentence of the paragraph at the top of that page, as it is here in this context, it is rather tantalizing, but could you illustrate the kind of thing you have in mind here?

Ms. Anderson: Yes. I can give you quite a classic example. A number of years ago, a high school which we occupied and which is owned by the diocese was put up for sale and our board had the right of first refusal on that sale. The high school had a bid on it from the Jewish community in Ottawa, and there was considerable debate at our board table as to whether or not we should retain the high school.

The high school option to purchase was defeated at our board table. It was an English high school and a majority of the English trustees wanted to retain that building for use within the English sector, but because it was a decision that could be made with the participation of both language groups, the high school was let go and was purchased by the Jewish community. When you have control by two bodies within one jurisdiction over the appointment of a facility, you have a very serious political situation.

Mr. Chairman: Thank you very much indeed for your presentation. We do appreciate it.

Ms. Anderson: Thank you.

Mr. Chairman: The next presentation we have is from the Carleton Board of Education, represented by Dr. Hansen, chairman. Would you come forward, please. I think members of the committee have copies of this brief.

I welcome you all, some of you again, but I would be grateful, even if you have been here before, if you could each repeat your names slowly into the nearest microphone for the benefit of translators and Hansard.

CARLETON BOARD OF EDUCATION

Mme Labrosse: Diane Labrosse, présidente du Conseil de l'enseignement en langue française, Conseil d'éducation de Carleton.

Dr. Hansen: My name is Hal Hansen. I am chairman of the Carleton Board of Education.

Mr. MacLennan: Lyle MacLennan, director of the Carleton Board of Education.

M. Jubainville: Raymond Jubainville, secrétaire administratif du conseil de l'enseignement en langue française de Carleton.

Mr. Hansen: Members of the committee, you heard from the chairman of our French-language advisory committee yesterday. The presentation you have today is from the board in total. Diane is here with us because we operate as a total board, as 19 trustees, for the benefit of public education in the Carleton jurisdiction. In the Carleton jurisdiction, 70 per cent of the ratepayers support public education, so our prime concern is to deliver quality public education at a reasonable cost to all the ratepayers in our jurisdiction.

On behalf of the board, allow me to express our appreciation for this opportunity to meet with you and to present our views on this historic bill.

The bill is landmark legislation which could have long-term implications on educational governance in Ontario. For the first time in history, the Ontario government is considering establishing a distinct board—or should I say two school boards—on linguistic grounds rather than on a religious basis.

The Ontario government had an opportunity to break new ground and establish a truly precedent-creating local political structure. While innovating through the fundamental concept of a French-language school board, the government, in writing the actual legislation, has been hamstrung by constitutional issues and by its reluctance to change the financial basis of educational financing.

Thus, what could have been a major innovation seems to be deteriorating into a complicated governance structure with little financial backbone to ensure its long-term survival and/or ability to deliver quality education. It provides French-speaking persons with apparent governance, but with no real and efficient decision-making powers.

We certainly hope this legislation does not provide a glimpse of the government's intentions towards all school boards in this province. If so, local autonomy will become a thing of the past.

The proposed legislation has been a long time in the making. Indeed, there is no single issue in our jurisdiction that has consumed so much of our time and energy over the past number of years, ever since the Mayo report was issued over a decade ago. Millions of words have been said on this subject already, but since 1976 our board has consistently endorsed the creation of a French-language school board in the region. However, the educational scene has changed dramatically in the past few years. Four specific events and/or tendencies have left a tangible mark.

First, the rapid but evolutionary growth of the French-speaking population requesting public education: The last few years have witnessed a clear movement of the francophone population towards the public school system at the elementary level. New French-language public schools have opened across the province and have shown a rapid enrolment increase. A greater increase is expected when more facilities are available to house the children of French-speaking persons requesting public education.

Second, the review of educational financing: Over the last 10 years, the government has reduced the provincial share of educational funding while increasing the requirements placed on school boards. This trend has clearly strained the capability of school boards to respond to the educational needs of the population and to its growing expectations. This policy has also limited the local autonomy of school boards, as a greater share of the local tax base is going to maintain provincially mandated programs.

We have regularly informed the ministry of the Carleton board's concerns in this regard and, though tempted, we will refrain from using this forum to reiterate our needs and those of our client population. These concerns were highlighted in our response to the Macdonald commission.

The ministry has made numerous unfulfilled promises to increase funding, but the government is also reviewing the whole issue of educational financing and has been so doing for a number of years. We anticipate the recommendations forthcoming from the Macdonald report.

We certainly understand the serious concerns of our FLEC with regard to the funding mechanism in Bill 109, and we share its reluctance to establish a long-term governance structure totally dependent on provincial promises. May we forewarn the government that the funding model proposed for the French-language school board is totally unacceptable to our Carleton board.

Third, Bill 30 and the extension of funding to the Roman Catholic school boards: Other than the purely financial costs resulting from this legislation, much of it at the expense of public boards, this historic development has had a devastating effect on the French-speaking population. Newly discovered constitutional requirements have in practice negated the original concept of a homogeneous French-language school board, and the proposed legislation in fact creates two wholly autonomous French-language school boards.

Within the French-speaking population, the debate surrounding the implementation of Bill 30 has been divisive and sometimes bitter and has profoundly influenced the issue of the establishment of a French-language board. One may question if 1988 is the most appropriate implementation date for a French-language board in this region that will attempt to unite both the public and the separate sectors of the French-speaking population. There could be some valid rationale for providing another three years in order to allow the Bill 30 debate to subside, to allow the resulting wounds to heal and the flowers of commonalities to cover the weeds of differences which are now prevalent.

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Fourth, Bill 75 and educational governance: While imperfect in its actual writing, Bill 75 has provided a basic form of governance rights to francophones and has been implemented quite successfully in our board. Within this framework, the Carleton board and its FLEC have established a positive and co-operative working relationship in order to better serve all public ratepayers in our jurisdiction.

In light of these four developments, the Carleton Board of Education has reviewed Bill 109 and questions aloud whether the proposed legislation truly responds to the aspirations of its French-speaking population in this region. We will, however, let representatives of that population answer that question.

In our submission to the Roy committee, we stated emphatically:

"It is not opposed"—we, as a board—"to any structure for the delivery of education in Ottawa-Carleton which is effective, efficient, fully representative of all constituencies, able to deliver a wide range of programs tailored to the needs of each student in an equitable way throughout the jurisdiction, is responsive to the various communities served and will not result in higher educational taxes."

We honestly fail to see how the overadministered, underfinanced, provincially dependent structure proposed under Bill 109 will enhance educational opportunities for the French-speaking public ratepayers and also respond to the criteria enumerated in the quotation above. But again, this is a question francophones must address.

The bill in effect has a number of areas, which we have identified, that need modification. Otherwise, we have this fear that there is going to be too much red tape, quite frankly.

As a board presently responsible for all public ratepayers in our jurisdiction we are concerned about the time lines for implementation. I remind the committee that Bill 82, landmark legislation fulfilling special education needs of students in this province, was given a three-year lead time. In that three-year period, the entire population had the chance to digest the significance of it, the implications of it, and boards had a chance to develop comprehensive plans for the actual implementation of special education. The time line here is drastically too short.

The government's decision to move comes at such a late hour that we are now faced with the awkward scenario of requesting that implementation be delayed. Let us be clear on this point. We are not suggesting that the concept of a French-language board be withdrawn. We are requesting that in this legislation Bill 109 specifically be withdrawn and a new bill be drafted, fully debated, and sufficient time be provided after royal assent, such that boards can draft clear and concise agreements on the transfer of assets and liabilities and on the transfer of staff after full consultation; boards and francophones can analyse the results and implications of the recent enumeration process; and boards can clarify upcoming changes to allow individuals to make informed choices for the educational wellbeing of their children and fully exercise their rights as ratepayers, electors and parents.

Just briefly on the enumeration process, which is another piece of legislation, as you are well aware, the educational process of identifying a francophone ratepayer, whether public or separate, is complicated. It is our board's position that a significant population of this province is being disenfranchised by this current enumeration process. This was highlighted by the Ottawa Roman Catholic Separate School Board, francophone side, earlier in your presentations. It has been our observation since the legislation was tabled that this is a major deficiency.

When people have a chance to digest the implications of that legislation, combined with the implications of a French-language board, from a straight, human-thought process point of view, it is our feeling that people will just need a little bit more time to look at the implications. If by July or September we find out that there are X number of people involved in supporting a French-language board, then you can make decisions with regard to how many schools you need, how many staff you need, etc. But to do all this in advance of that and in combination with it over the summer months is a very difficult process. Hence, we think the time line is drastically too short.

French-speaking ratepayers and electors can elect representatives for the first time to existing boards under the normal electoral process. Need we recall that at the present time all the existing French-language trustees under Bill 75 will, this November, if Bill 75 stays in place, as in other parts of the province, be elected for the first time under the normal electoral process without the complications of the new electoral bills.

The resulting local political debate which will follow legislative changes can run its course before we are faced with the implementation of the French-language board.

The government can announce and implement its long-awaited review of education finance, thus allowing the French-speaking population to determine the long-term viability of the French-language board.

Any constitutional challenges can be tested in the court before the area boards begin a massive overhaul of existing structures.

Notwithstanding the establishment of the French-language school board, the government is also proceeding with major changes to the municipal electoral process, and I have already highlighted those.

May I, again, stress that this bill is not a minor amendment to the Education Act. We are establishing a long-term structure to provide educational opportunities for the French-speaking population for many decades to come. This must not be taken lightly, and I am sure the committee realizes this. We must not allow political expediency to dictate decisions of such tremendous impact on a large segment of our population in this region. I cite, again, the example of Bill 82, where there was a three-year lead time for all of the processes to have the necessary impact.

The Carleton Board of Education will endeavour to fully respect the desires of the French-language population, as expressed very thoroughly by its elected representatives and Diane Labrosse, who is sitting on my left.

As our French-language education council has already informed you, this legislation does not respond to its aspirations. We will not reiterate the concerns they have expressed, but we would like to inform you that we fully support the position taken by our FLEC.

If implementation is delayed, the Carleton Board of Education will continue to work diligently and co-operatively with its French-language section under the existing provisions of the Education Act to fully serve all public ratepayers in our jurisdiction whether they be French-speaking or English-speaking.

In the event that this majority government decides to proceed, nevertheless, with this piece of legislation, as it appears to be doing with other major pieces of municipal electoral process in the midst of an election year, we have included in appendix A comments on specific components of Bill 109. These deal with the resolution of disputes, the transfer of buildings and assets, the transfer of employees and the role of the Languages of Instruction Commission of Ontario.

We have identified other areas of the bill which require classification or clarification in terms of amendments. They deal, however, with the internal structure of the French-language school board, and we have left it to our FLEC to highlight these sections.

We have previously expressed in strong terms our opposition to the funding mechanisms proposed for the French-language school board, and we provide as appendix D our reaction to the consultation document published by the Ministry of Education prior to the tabling of the legislation.

Existing boards have little to gain by having a coterminous board as an underfunded provincially dependent board. This fiscal year we have felt acutely and painfully our own dependence on ministry grants in establishing our budget. If the French-language school board is underfunded, existing boards will only be faced five or six years down the road with the difficult task of having to reintegrate francophones who will desert their board if it cannot provide adequate services. We have too much respect for our French-speaking public ratepayers to accept that they will leave us to become the poor cousins of the region.

In summary of our response to the Macdonald commission in June 1986, we stated emphatically:

"School boards are essential partners in the delivery of education. Local autonomy must retain and remain the cornerstone in the delivery system of public education in Ontario.

"School boards must maintain access to commercial and industrial taxes for all expenditures.

"While the Carleton Board of Education endorses the principles of equal opportunity, equity among boards and effective, efficient, and economical delivery of educational services, it firmly rejects the myth that greater provincial control is the magic potion that will transform these principles into practical realities. We strongly believe that maintaining the practical equilibrium between local governments, governance and provincial involvement will, in the long run, effectively consolidate these principles, provide excellence in education and ensure responsiveness to the needs of Ontario's population."

Far from supporting these principles, Bill 109 appears to work in the opposite direction. Indeed, such a model implies the end of local school governance and autonomy in Ontario. The Carleton Board of Education cannot accept Bill 109 as it is presently written. The Carleton board has repeatedly endorsed the establishment of a French-language board in this region. We remain committed to this undertaking, subject to such an endeavour's being fully respectful of the needs of French-speaking public ratepayers, electors, parents and students.

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Our French-speaking education council has advised us that Bill 109 does not fully respect the needs of French-speaking public ratepayers and we concur with its conclusion. We are thus requesting, with full support of our council and its electors, that the government delay the establishment of the French-language school board until new legislation is prepared that will ensure that the new French-language school board can provide to its population a quality education on the basis of equality with the majority. In our view, Bill 109 does not ensure this quality of education and must be withdrawn.

I thank you on behalf of our board for this opportunity to appear before you and to present our brief. I would like to highlight, on the first page of appendix A, the section dealing with transfer of buildings and assets. If you turn that page and look at the last paragraph, just prior to part 13, transfer of employees, you will note a key and probably significant concern that we have as a board. As much as we made major presentations to Bill 30 and as much as we have implemented, to the best of our ability, the legislation surrounding Bill 30, the one thing I can say about it is that there are protections in Bill 30. There are specifics; there are clauses that say what the process is; there are clauses that say what the arbitration process is, if there are disputes.

This legislation, and specifically subsection 62(9), given the month of December as probably the first month the new board will be sitting after its election, other than for a few cosmetic sorts of decisions in terms of naming the auditor, who the director is going to be and so on—as a matter of fact, it is not even the director; it is an executive secretary of some kind—in any case, the major decision is to decide whether the transfer of all the assets from the existing four boards is adequate and satisfactory.

I do not have to tell you that the majority of francophones in this jurisdiction, given the present demographics, support the two separate boards.

The majority vote quite possibly could be, "We do not like all the assets transferred by the two public boards." The minority public school francophones have no choice in the matter. They may vote against it, but being in the minority, the majority of the board will decide, or could possibly decide, that it does not like the assets that were transferred. It goes immediately to the language commission for arbitration. We have no say as a board in the transference and the discussions that would take place with regard to the languages commission.

In effect, although there are protections in Bill 30 right now for discussion among coterminous boards vis-à-vis facilities, etc., this provides no protection whatsoever and, quite frankly, we could lose all our assets just by a majority vote if that particular cynical situation could exist. I am not saying that it will not exist or that it will exist, but that is a fear. I highlight that because that section, in our opinion, has to be amended. Otherwise, that worst scenario could result. From our point of view, it is totally unacceptable.

Thank you again for your time. We are open to questions. I notice the minister, Mr. Ward, is here. Thank you for coming to our fine region at this time of year.

Mr. McGuinty: Thank you, Mr. Hansen. Some of the comments you make make me wonder if I have been reading the wrong bill. Would you elaborate, for example, on the second paragraph? You recorded, "It provides French-speaking persons with apparent governance but with no real and efficient decision-making powers." Would you elaborate on that, please?

Mr. Hansen: In our view of the bill, there are so many powers that are decided between each of the sectors, as I said, it is awkward, quite frankly. I appreciate the government's making an attempt to get in at the constitutional issues and so on, but the way it is structured, we end up with three directors of education, even though the main director is not the "director"; it is another term to satisfy, I think, constitutionality. The two sectors are in fact two autonomous boards. If you read through all of the powers of the board, both sectors operate like any board, separate or public, in the province at the present time. The only common jurisdiction is, as I said earlier, to appoint an auditor and decide on whether the assets are fine and to meet periodically to decide if there is anything in common you want to discuss.

Given the scenario of a massive bureaucratic structure, even though there is a possibility that if the board wants to get together to decide if it wants to reduce the number of jurisdictional issues, that it wants central versus separate, that is what I refer to in terms of the decision-making process.

Mr. McGuinty: One other point. It is kind of an editorial comment that detracts from your otherwise very thoughtful brief in so far as it has been stated and I think it should be clarified for the record. On page 2, the second paragraph, you refer to the financial costs resulting from Bill 30 legislation, much of it at the expense of public boards.

Dr. Hansen: Yes, that is our belief, quite frankly. Somebody has got to finance the implementation of Bill 30 and, with all due respect to the provincial government, which collects taxes from the entire province to fund education provincially, we have two public systems in the province; one is called separate and one is called public. I respect and we respect as a board that the funding obviously comes from provincial sources.

However, there are local sources. In our particular jurisdiction, given the formulae that hopefully we will be able to continue to discuss with the minister and his staff, in terms of our high growth area we are not satisfied with the formulae, because we got dinged for \$6 million this year in lost revenue. That is a drastic hitting of the pockets of public ratepayers in our jurisdiction. When you match that with—hopefully, we will be able to discuss further—our great capital needs in terms of growth, the money is going, somewhere and it sure is not in the Carleton board jurisdiction for the 70 per cent of the ratepayers we are supporting. That is the reference to the financial aspect.

Mr. McGuinty: All right. Thank you.

Mr. Sterling: First, Dr. Hansen, I would like to thank you and the other people for coming. I have always found the Carleton Board of Education one of the leading boards of education in Ontario in reacting to provincial initiatives.

Dr. Hansen: Thank you.

Mr. Sterling: I have received in the past your briefs with regard to other provincial issues and I can tell you, as a member of the provincial Legislature, I appreciate receiving those and passing along your concerns in the Legislature.

I have also been very much impressed in terms of your response to the consultation paper, even given the short period of time you were given to respond to that, and your consistent position in terms of favouring a French-language board over the past three, five or six years, I guess it has gone on, ever since you really considered the issue.

One thing I am very much concerned about and I think the board is very concerned about is the support of the public sector French board after this has been created under Bill 109 and the other legislation that is companioning it.

I have heard through various sources that for the average taxpayer who would support the public French board, after the provincial assistance is stripped away some time in the future because the province cannot go on supporting a French-language board indefinitely, it would be very substantial. In other words, in order to maintain the same level of quality of education that French-language students are now receiving under the public boards in the Ottawa-Carleton area, the parents of those children would have a substantial increase in their property taxes in order to maintain that. Is that the board's analysis of the situation? That is where push comes to shove in this whole thing.

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Mr. Hansen: You are accurate in our current distribution of taxes, Nepean being the largest jurisdiction of the eight we serve. That is about \$1,100 per house, valued at whatever we value the houses—is it \$100,000 that we usually use in averages?

On the assumption that there are few public school—not the assumption; it is a fact—supporters on the francophone side, if they were to assume the full burden of financing, as you and I do at the present time in financing, either a separate or a public school board, you then reduce that drastically

by several hundred potentially. The burden on those individual taxpayers is just horrendous. We are guessing that it is in the \$2,000 range, rather than the \$1,100 range.

As Ms. Labrosse mentioned yesterday very succinctly, in a response to Mr. McGuinty, on the one hand, you end up having to cut services, so you lose your students. If you raise taxes, you lose the ratepayers. In her words, it is a no-win situation, because it is a minority within a minority.

I do not know if that gets at your observation, Mr. Sterling, but—

Mr. Sterling: So you are suggesting that in order to maintain the level or quality of education after the provincial interim funding has been stripped away, property taxes could almost double for people.

Mr. Hansen: As a minimum, yes, based on our ball-park figures. We appreciate the government's delaying—not in a negative sense, but I remember Mrs. O'Neill's comments at the consultation session we had in Ottawa and questions from all of us with regards to financing, and her response was—I do not want to put words; obviously she can comment herself—but it is premised on the analysis of the Macdonald commission and how financing is going to fall out for all boards. We appreciate that.

Essentially, home owners are the ones who finance the operation, regardless of what the Macdonald commission is going to say. Yes, we are looking at least double, as a minimum, regardless of grants. Even if you included the grants, theoretically, all the other taxpayers in the province are subsidizing the creation of the new board. If that goes on and on and on, then you end up being very dependent on provincial sources, rather than local autonomy.

I should remind the committee as well of our position as a board, contrary to the two separate boards in our jurisdiction. I know it is the same with the Ottawa public school board, but dealing with commercial-industrial assessment, the bulk of which is in the city of Ottawa at the present time, our position is that it should be regionally pooled. As you all know, this bill infers, unless it is more clearly stated, the loss of access to commercial-industrial assessment for the new board.

Our position is that it should be regionally pooled, not provincially pooled. That way, the jurisdictions, in our area at least, will be using the money that taxpayers are providing, business as well as otherwise, to the boards in this area.

So provincially-pooled assessment is unacceptable to our board because of the dependence factor. If the minister is going to consider pooling, I suggest he gives serious review to the regional aspect of pooling assessment and maybe that will better finance the existing boards, quite apart from the new French-language board and, as Mr. Sterling has indicated, certainly reduce the burden on individual taxpayers who are faced with a potential doubling of taxes down the road.

Mr. Allen: I guess the best point to take off is where you left off. We do have the minister with us this morning. We have heard, time and time again, from briefs from other groups that the question of finance is very critical and central to the future of the whole undertaking and also to the welfare of the boards that will continue in their own domain and jurisdiction subsequent to the establishment of a French board.

We all are aware that sometimes the requests for a mechanism that appears to anticipate a resolution of educational finance in the province as a whole may be, in some respects, premature. None the less, I think all of us would be very interested in knowing when the province is going to tackle educational financial reform across the province and what form it is going to take.

Will it, in fact, move in the direction of total provincial pooling, or will it, on the other hand, satisfy the local needs for autonomy and do it on a regional basis, and then the ministry get on with the job of scaling up its provincial proportional share of education financing across the board in its overall operational capital grants?

I would like to invite the minister to make some response while he is here to people from this region on this particular subject, because I think it is true that one cannot put the French board in the invidious position of going on for ever on an ad hoc funding basis. At the same time, I am not going to insist that a project like this be held up for two or three years if we have a definite time line as to when those major education reforms in finance are going to kick in.

I think it would be very helpful psychologically for all of us in this room and in this region to hear the minister say some words that are reasonably definite. As we all know, we have been looking at the question of education finance in this province under the previous administration for years. We have been under this government now into the third solid year of its administration. We still do not see any light at the end of that tunnel. Where is the light? Can we have some definite word? I think that would help us all greatly.

Mr. Chairman: If the minister would care to respond, fine, but I would like to remind you that this delegation is very lucky in the timing of your arrival and we do have other delegations, so I would be grateful if you would be brief.

Mr. Allen: On a point of order, Mr. Chairman: I want to say that this is a question that has come up with every single presentation, and I think therefore, on behalf of all of the presenters to this committee, it is important that the minister take time to respond adequately at this point.

Mr. Chairman: Responding to the point of order, I agree with that, but we do have delegations coming here until six o'clock, and there are people preparing their schedules accordingly.

Hon. Mr. Ward: I am delighted to have the opportunity to visit the committee's deliberations, albeit briefly. Some of the other pressures make it difficult, as you know, and there is often a requirement to be in more than one place at one time. But I do recognize the importance of these hearings and, as my colleague the member for Hamilton West (Mr. Allen) knows, the purpose of these hearings is indeed to receive public input.

It is our task from there to take that input and do what we can to refine and improve on whatever initiatives we choose to take. I see this exercise very much as one of helping to develop further consensus, helping to build upon what we have before us to be considered as the appropriate legislative model.

I was very much interested in the Carleton board's presentation, and particularly its concerns relative to funding. I think Mr. Allen and others are well aware that the whole issue of education finance is very much under active review. I think there is strong recognition here, certainly on the part of the board and others, that education funding is an inherently complex exercise. We do have a team working on it, and I expect to come forward in the coming year with the proposals for reform.

I take to heart the comments of the Carleton board. I do recognize that their concern and their response during the course of the consideration of education finance was a strong endorsement of the principles of equal opportunity, equity among boards. I want to assure them that is a concern I share.

Mr. Hansen alluded to the fact that under the current mechanisms by which we try to equalize the mill rate in this province to make up for the disparities of wealth in terms of assessment of different regions, there are continual adjustments to the rate of grant, so that a board that has a stronger assessment base in fact receives a lower rate of grant in an effort to provide some equity between assessment-poor regions and those that have a much stronger assessment base.

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One of the fundamental recommendations of the Macdonald commission has been to pool the assessment so that everyone is on a level playing field, so that everyone can have, I suppose, a similar rate of grant. That is one of the options that, of course, we will have to consider.

I would point out that, in terms of the funds that flowed to boards this year, the increase was 7.2 per cent—that during a year when the rate of inflation was below 4.5 per cent—and for the past three years the funds that have flowed to boards have been at a substantially greater rate than the rate of inflation.

We have run into the conundrum of the desire of boards to exercise autonomy and our need to try to fund at appropriate levels to deliver an equitable and consistent program. One of the great difficulties is that there is no upper limit, and we understand that is as a result of the way in which the responsibility is shared. It is very difficult to fix a rate of support for an unconstrained expenditure, and I am sure the board will appreciate that as well.

In response to Mr. Allen, I can only assure him that we expect to be coming forward in the coming year. I will take the comments of the Carleton board to heart in its desire to see a more equitable method of ensuring that boards have the same opportunities from one end of this province to another.

Mr. Hansen: I appreciate the minister's comments, but I would remind him, when he mentions the level playing field, that by regulations of sports governing bodies and so on, all playing fields are contoured for drainage purposes, and that implies flexibility to be allowed for in various regions.

As much as the 7.2 per cent overall for the province was applicable, that translated in total in our board, as a growth region, because of our 80 per cent residential assessment with very little commercial-industrial, to 1.5 per cent provincial support. That is the basis for our concern, and I am very happy to hear you speak with regard to recognizing ourselves and the other

three growth regions as possibly a little different in your analysis with respect to the financing that will come forth in the future.

Hon. Mr. Ward: Just one minor point: We speak at length over the transfers relative to operational funds in this province. Mr. Hansen will know that four board jurisdictions, four regions of this province, did in fact consume something like 81 per cent of a \$380-million capital plan. I know it is never enough, Mr. Hansen; I hear that consistently. But I think we also have to bear that in mind when we make our case as to the extent to which regions are advantaged or disadvantaged by the government's largesse.

Mr. Chairman: Dr. Hansen, I would thank you, and Ms. Labrosse, Mr. MacLennan and Mr. Jubainville, thank you.

Mr. Sterling: Before they go, I just have to say something with regard to capital funding. When the minister talks about the wonderful capital funding for this province and for the four major areas, this board has done the worst of any board in all of Ontario regarding capital funding and its needs. They have 1,000 new students this coming year and they were given about \$3 million for capital expansion. They got about 10 per cent of what they asked for this year and they got about 15 per cent of what they asked for last year. It is a disgrace for the minister, in my view, to say this board has been treated fairly with regard to capital or operational funds.

Mr. Chairman: Dr. Hansen, I thank you and your colleagues again.

La prochaine délégation est l'Association française des conseils scolaires de l'Ontario. Would they come forward please? Madame Gervais, je vous souhaite la bienvenue encore une fois.

- ASSOCIATION FRANCAISE DES CONSEILS SCOLAIRES DE L'ONTARIO
REGION 1 (EST)

Mme Gervais: De nouveau. Merci. On dit des fois qu'on mérite des miracles parce qu'on a été gentil quand on était tout petit. Alors, j'imagine que c'est ce qui m'est arrivé, du fait que j'ai devant moi le ministre de l'Education (M. Ward). Alors, je lui souhaite la bienvenue.

Je voudrais d'abord me présenter. Mon nom est Carmen Gervais. Je suis ici de nouveau mais en tant que présidente de la région 1 de l'Association française des conseils scolaires de l'Ontario.

Mme Gérin: Odile Gérin, directrice générale de l'Association française des conseils scolaires de l'Ontario.

Mme Gervais: D'abord, je dois vous dire que je suis particulièrement heureuse de me présenter de nouveau devant votre Comité pour souligner, en tant que présidente, le caractère historique du projet de loi 109. C'est pour nous l'aboutissement de plus de dix ans de luttes, de représentations, d'études et de mémoires. Je pensais remettre l'accent là-dessus. Ce n'est pas dans le mémoire, mais si vous me le permettez, je voudrais le faire.

Pour le gouvernement, c'est une façon concrète, pratique, réaliste et positive de reconnaître la réalité française en Ontario et la place qu'y occupent les francophones de la région d'Ottawa-Carleton. C'est une mesure de bonne gestion qui remplacera les structures bilingues des quatre conseils par une structure de langue française. C'est aussi une mesure de grande vision qui fait passer la communauté francophone de la région d'un état de minorité

permanente dans les structures scolaires à un état de responsabilité de la gestion de son système scolaire.

La régionale de l'Est, région 1 de l'Association française des conseils scolaires de l'Ontario, regroupe les conseillers scolaires de langue française des douze conseils de l'Est de l'Ontario, à savoir les conseils séparés et les conseils d'éducation de Stormont, Dundas et Glengarry, de Prescott et Russell, de Carleton, d'Ottawa, de Renfrew, de Frontenac et de Frontenac-Lennox-Addington. Les douze conseils regroupent 36 214 élèves francophones, et je vous laisse libres de regarder l'appendice A. La régionale de l'Est poursuit les mêmes objectifs que l'association provinciale, entre autres la promotion de l'éducation française en Ontario, tant catholique que non confessionnelle.

La régionale de l'Est désire depuis de nombreuses années l'établissement d'un conseil scolaire de langue française dans la région d'Ottawa-Carleton respectant deux principes fondamentaux, soit le respect des droits religieux acquis sous l'article 93 de la constitution et le respect des droits à l'enseignement en langue française sous l'article 23 de la Charte canadienne des droits et libertés. C'est pourquoi, après plusieurs années de recherche et de réflexion, forte de l'appui de ses membres, elle proposa en 1985, au gouvernement de l'Ontario, un modèle de projet de loi rédigé à sa demande par M^{re} Pierre Foucher, modèle qui servit de base aux recommandations du comité Roy et, par la suite, au Comité de planification pour la mise en oeuvre du conseil scolaire de langue française.

Toujours soucieuse de travailler pour l'avancement de l'éducation en français, la régionale s'est penchée sur le projet de loi 109 afin d'analyser son impact sur la collectivité française de la région 1. Dans son ensemble, le projet semble répondre aux besoins du milieu. C'est pourquoi nous laissons aux représentants de la communauté francophone d'Ottawa-Carleton le soin de s'exprimer en ce qui a trait à leurs préoccupations concernant certains aspects structurels et fonctionnels du conseil scolaire de langue française.

Ces aspects sont importants et nous demandons au Comité de les considérer sérieusement afin d'y apporter les amendements que nous proposons. Je dois vous dire que nous le faisons dans un esprit de collaboration avec tous les intervenants dans le dossier et nous sommes prêts à collaborer avec le gouvernement pour pouvoir améliorer ce que nous avons peut-être identifié comme certaines carences. Par contre, et ici je voudrais souligner un point, et j'ai consulté certains membres de mon exécutif, nous ne voudrions pas qu'on se serve des points que nous soulevons comme étant des raisons pour lesquelles on retarderait la mise sur pied du conseil scolaire de langue française. Nous voulons plutôt travailler ensemble afin de l'améliorer.

En ce qui concerne le financement, la Cour d'appel de l'Ontario, en juin 1984, dans le renvoi concernant la Loi sur l'éducation de l'Ontario, stipulait:

<The rights conferred by this section with respect to minority language facilities impose a duty on the Legislature to provide for educational facilities which, viewed objectively, can be said to be or appertain to the linguistic minority in that they can be regarded as part and parcel of the minority's social and cultural fabric. The quality of education to be provided to the minority is to be on a basis of equality with the majority.>

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En 1987, le jugement Sirois reconnu et confirma aux francophones le droit à des services éducatifs égaux. C'est donc dans cet esprit qu'il faut regarder toute forme de financement du conseil scolaire de langue française. Le financement doit faire en sorte que les francophones de la région aient accès à une qualité d'éducation et à des services comparables à ceux qui sont offerts aux anglophones dans les conseils de la municipalité d'Ottawa-Carleton.

Or, en examinant de près les dispositions du projet de loi en matière de financement, il nous paraît y avoir des anomalies considérables et, nous le pensons, possibilité de contestation du projet au plan constitutionnel. La difficulté fondamentale qui s'est fait jour réside dans l'adoption de mesures plus favorables au système des écoles de langue anglaise que celles qui sont prévues pour les écoles de langue française. La distinction opérée par la Loi est contraire à l'article 15 de la Charte canadienne des droits et libertés puisqu'elle crée une discrimination fondée sur la langue.

La nature même de la discrimination est assez facile à cerner. D'abord, la définition du francophone est limitée aux personnes protégées par la Charte à l'article 23, toute autre personne étant assimilée à un anglophone, quelle que soit sa langue. Cela signifie que l'école française est vue comme une école dissidente réservée à une classe protégée, comme dans le cas des catholiques. Or, l'analogie n'est pas conforme à l'esprit de la Charte et discrimine contre le francophone véritable non protégé par l'article 23. Même parmi les personnes protégées, le projet de loi discrimine contre le copropriétaire francophone, au paragraphe 17(2) concernant le soutien scolaire. Pour les personnes morales, il y a aussi présomption d'appui au conseil de langue anglaise, aux paragraphes 18(7) et 18(2), et limitation du droit d'appuyer le conseil scolaire de langue française, même au plan du secteur non confessionnel, au paragraphe 18(8).

Les articles susmentionnés seraient inconstitutionnels en raison de leur objet même, qui est de favoriser les écoles de langue anglaise pour fins de taxes, sans qu'aucun motif d'ordre public puisse être invoqué pour justifier la distinction aux termes de l'article 1 de la Charte, qui autorise les limites raisonnables aux droits constitutionnels. Ces articles sont aussi inconstitutionnels au plan de leurs effets puisqu'ils vont avoir pour résultat un sous-financement du conseil de langue française par rapport au conseil de langue anglaise.

Nous insistons, donc, sur la nécessité de se repencher sur la méthode de financement de ce nouveau conseil afin de s'assurer que les amendements prévus soient tels que la Loi soit conforme à la Charte des droits et libertés et élimine toute possibilité de discrimination. Il va sans dire que tout financement intérimaire doit aussi respecter les énoncés mentionnés ci-dessus.

Tout à l'heure, un de vos membres a posé une question de savoir comment on pourrait faire ça. Il suffirait, à un moment donné, peut-être dans l'interprétation à la page cinq du projet de loi, que j'ai devant moi, quand on définit «francophone», non seulement de se limiter à la définition de la Charte des droits et libertés mais peut-être aussi d'y inscrire un texte qui aurait pour effet d'y inclure les personnes dont la première langue officielle adoptée au Canada est le français.

<Opting-in>: Devant la situation particulièrement minoritaire dans laquelle se trouvent les francophones de l'Est ontarien - par exemple Kingston et Pembroke; et là encore, on vous renvoie à l'appendice A, qui indique les

nombreux - il se peut qu'éventuellement des communautés francophones souhaitent s'annexer au Conseil scolaire de langue française de la municipalité d'Ottawa-Carleton afin d'offrir une gamme plus complète de services en français. Une telle initiative pourrait contribuer au développement culturel et linguistique de ces communautés.

J'ouvre la parenthèse, Monsieur le Président. Cela me fait d'autant plus plaisir de souligner cette possibilité de <opting-in> que j'ai eu une très bonne conversation avec le ministre il n'y a pas tellement longtemps, où il me disait qu'il était ouvert à ce qu'on modifie les frontières. Donc, j'imagine que ça devrait lui sourire de voir cette recommandation.

C'est pourquoi nous demandons à votre Comité de voir à faire ajouter dans la Loi un article qui prévoit la possibilité pour des représentants francophones d'un conseil scolaire avoisinant de demander l'annexion de leur module scolaire de langue française au Conseil scolaire de langue française d'Ottawa-Carleton: <opting-in>. Vous pouvez le faire avec un amendement à la Loi 75 qui dirait qu'on peut se soustraire à la Loi 75 ou être exempt de la Loi si on accepte d'aller vers un conseil scolaire de langue française, ou encore, en l'insérant dans le projet de loi 109 d'une façon ou d'une autre.

En conclusion, nous devons réitérer notre grande déception devant le refus du gouvernement de l'Ontario d'accorder à la région de Prescott-Russell son conseil scolaire de langue française. Vous me direz que la question dépasse le mandat qu'on vous a donné. A notre avis, cela ne dépasse pas votre mandat plus que les présentations qui vous ont été faites et qui vous seront faites sous prétexte que la venue d'un conseil scolaire de langue française dans la région aura un impact sur l'éducation non seulement française mais aussi anglaise au niveau provincial. Nous nous permettons donc de vous demander de faire une recommandation d'inclure dans la loi 109 des mesures qui accorderaient un conseil scolaire de langue française à Prescott-Russell en 1989.

Nous remercions votre Comité de l'attention qu'il voudra bien accorder aux questions que nous avons soulevées et nous espérons que des amendements seront apportés au projet de loi afin que la Loi respecte les droits constitutionnels des francophones, tant sur le plan linguistique que sur le plan religieux.

Encore une fois, en conclusion, je voudrais réitérer notre appui de la teneur fondamentale du projet de loi comme tel, mais pour nous, même si nous le considérons comme un pas en avant, nous aimerions y voir des amendements et nous sommes prêts à collaborer avec vous.

M. le Président: Nous vous remercions, Madame Gervais.

M. Allen: Merci, Monsieur le Président, et merci à l'Association française des Conseils scolaires de l'Ontario pour son mémoire bref mais très exact, précis et clair pour nous.

Premièrement, j'appuie fortement votre suggestion de l'alternative de <opting-in> ou de conseils scolaires régionaux pour les régions avoisinant Ottawa-Carleton.

Deuxièmement, croyez-vous que la structure actuelle décrite dans le projet de loi respecte adéquatement les droits religieux des catholiques francophones?

Mme Gervais: Oui, Monsieur Allen. Quand nous nous sommes penchés sur cette question, nous nous sommes sentis à l'aise, surtout que nous, nous considérons le droit des catholiques comme la possibilité de pouvoir gérer leur éducation. Quant aux structures comme telles, dans le passé, quand nous les avons considérées, nous ne tenons pas nécessairement à la structure d'un conseil scolaire, d'abord que nous avons l'autonomie sur la gestion. Je dois vous dire que nous aimerions peut-être même pouvoir mettre plus de choses en commun qu'il n'est possible de le faire dans le projet de loi tel qu'il est présenté. Mais comme nous reconnaissons, comme association, qu'il y a des différences d'une région à l'autre en ce qui a trait au projet de loi 109, nous laissons les gens de la région répondre à ces questions.

M. Allen: Merci. En ce qui concerne le financement, nous sommes en présence du ministre de l'Éducation ce matin. Nous avons beaucoup de questions concernant le niveau de financement qu'accordera le gouvernement au conseil francophone pour lui assurer un niveau d'éducation et des services égaux, comparables et équivalents à ceux des autres conseils de la région. Je veux lui demander s'il a des nouvelles pour nous concernant le niveau exact de ce financement et ce qui, selon lui, sera le niveau moyen des services de la région, ou s'il prévoit un niveau entre la moyenne et le niveau le plus élevé, ou s'il prévoit le financement du conseil scolaire francophone au niveau le plus élevé de cette région — par exemple, à un niveau équivalent à celui du Conseil scolaire d'Ottawa.

Mme Gervais: La question est adressée au ministre.

M. Allen: C'est pour le ministre.

Mme Gervais: Je n'oserais pas répondre pour lui, Monsieur le Président.

Mr. Campbell: Given the numbers—which I appreciate having now, by the way, as they give me a little proportion of where the numbers are—first of all, it seems to me you are proposing two options beyond the Ottawa-Carleton area, and I guess that is a little out of the framework, but I understand why you have brought it in; no problem. You look at two options. One is setting up a French-language school board for Stormont, Dundas and Glengarry.

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Ms. Gervais: That is not really what I am suggesting in my brief, but if the government is willing to give it, I am sure they will take it.

Mr. Campbell: That is why I wanted to clarify what you had said, because I was not sure if you were looking —

Ms. Gervais: Prescott and Russell is the one—

Mr. Campbell: Prescott and Russell, yes. I am sorry. Looking at the two options of opting into the Carleton school board, the Carleton—or whatever the French language—

Ms. Gervais: I am sorry. The area from Renfrew and Pembroke and the area from Kingston and the Thousand Islands, if ever they wanted to.

Mr. Campbell: Yes. You seem to be proposing two options, whatever school boards they are, that others come in or set up their own.

Ms. Gervais: Yes.

Mr. Campbell: For example, if the numbers were here, if you had 4,000 students, let's say, in Stormont, Dundas and Glengarry, or if in Prescott and Russell you had 6,000, you could work with another board to create a larger board. Is that a viable option in your mind?

Ms. Gervais: You mean as a regional board?

Mr. Campbell: Yes.

Ms. Gervais: As an eastern regional board?

Mr. Campbell: Yes.

Ms. Gervais: Well, it is not our option per se, for the simple fact that we feel the numbers warrant different boards within the region.

Mr. Campbell: OK.

Ms. Gervais: OK? If, on the other hand, you were to ask me if a 400-student board is a viable one, I would turn around and say it is as viable as Alliance Quebec in Quebec, which has a lot fewer students than that.

Mr. Campbell: OK, I appreciate that. I am not as familiar, perhaps, with the regionalization that went on in Quebec a number of years ago. That is something, I guess, we will look at.

Mrs. O'Neill: If I may call on that same point, Ms. Gervais, I am wondering if there is an option here you are suggesting for Prescott and Russell, because Prescott and Russell does buy a lot of education, or is there still an intent on the part of your association to keep Prescott and Russell totally separate from the opting in?

Ms. Gervais: From our point of view, Prescott and Russell warrants its own French-language school board. In fact, the government has set up a committee, as you know, and there was a recommendation to that effect. As far as we are concerned, the only reason we are putting in—What we are saying is that maybe you could amend the law to permit Prescott and Russell to set up its French-language school board. In other words, you could have a clause within Bill 109 which would say that the same can be set up in Prescott and Russell.

However, if the government decides to bring in a separate bill for Prescott and Russell, that could be another option, but definitely our position is that Prescott and Russell does deserve its French-language school board. There is a social consensus there, and we feel it is urgent that the government go ahead and implement it now that it has studied it.

Mrs. O'Neill: OK. If I may go back to page 3 of your presentation as well regarding the difficulty on designation of corporate assessment, have you, in your collective wisdom, come up with—and I know you have worked on this in other areas, but—

Ms. Gervais: That is what happens when you have a bad reputation, right?

Mrs. O'Neill: Oh, no. It is a good reputation, Carmen. You suggest without there being any public interest motive to justify the distinction.

Ms. Gervais: Yes.

Mrs. O'Neill: Have you been able to come up with any wording you could present to us that maybe would help us?

Ms. Gervais: I would be pleased to do so. We have not done any wording per se. We have studied the question, as you say. We feel very confident that if somebody were to challenge this, we would have a fairly good case. We do not particularly want to do it. We would much rather see the government make some kind of amendment that would take it into consideration, and I would be more than pleased to submit some wording to that effect.

Mrs. O'Neill: I would certainly appreciate that for our consideration. Thank you very much, Carmen.

Ms. Gervais: Thank you.

Hon. Mr. Ward: I want to thank you for your excellent presentation. I just have a few brief comments. The first one I would like to deal with is the concern relative to the section 15 constitutional rights. When we deal with these issues so often, we run into rights that appear to collide with each other, and the whole notion of the conflict between section 15 and section 23 is one that we certainly have been running into in a lot of instances and something that I think does have to be fundamentally looked at.

I am reluctant, though, to say that we should move away from the position we have today until we have had the opportunity for the kind of consultation I think is necessary on that and the kind of input we need, because there are very strong opinions on both sides of that issue and we really have not had the benefit of much experience in terms of challenges and decisions in that regard.

With reference to your suggestion that a provision be made to permit other neighbouring regions to opt in, I want to reiterate what I said during the course of the second reading debate, and that is that this bill is clearly designed for the Ottawa-Carleton region; it is meant to be specific for the Ottawa-Carleton region. There is no doubt in my mind that we have to move towards developing legislation, one hopes of a generic nature but flexible enough to be applied in various regions of this province. There is no doubt in my mind that there will be other French-language school boards, and one of the great challenges that we face will be preparing a flexible kind of framework that can be utilized in the development of those boards.

The suggestion that on a regional basis French-language boards should be created is one that we have heard before and, I think, one that has a lot of merit in some circumstances, particularly relative to public sectors as well, because the enrolment numbers in many instances are just not there. You have that benefit in Ottawa-Carleton. It is one of the few areas of the province that does have a viable public and separate sector, but in many instances the numbers are just not there, and there may be some need for flexibility. I should not start hypothesizing about what form any proposed legislation should take, because we are not close to that as yet, but we certainly will be taking your input and seeking your advice on this and many other matters.

The last point I would like to make is on the financing. If we had utilized the formulas that are in place province-wide, this new board could not have lasted more than a few weeks. I think our interim financing arrangements, until such time as we have dealt with the broader issue, are fair and generous in terms of ensuring that the people of this region have access to the fundings for the quality to which they are accustomed in terms of the boards that operate here now. But, frankly, in the absence of having completed our review of financing, I could not foresee any other mechanism by which to fund this board, at least for its first year of operation.

Ms. Gervais: May I respond, Mr. Chairman?

Mr. Chairman: Madam, I would be grateful if you would be fairly quick. We have another delegation.

Ms. Gervais: Yes, I know the one that is following me is very nervous.

One of the things I should make clear is that article 15 is one of the points you touched on, and article 15, in our minds, does not go contrary to any of the other constitutional rights. I think you are right: When you start working in this dossier, at some point you find that what you thought was the ideal vision has to be diluted because of constitutional rights. That is one thing I think we should look at together.

This bill being specific for Ottawa-Carleton, if you look at the numbers as far as appendix A is concerned, you will find that the numbers in places such as Frontenac and Renfrew are so small that it might be difficult for them to have their own French-language school board, be it Catholic or other. Our position is very clear that we do not state one model for the province. We recognize that each area might have specifics and they have to be addressed.

We have dealt with this issue at some of our meetings, and the people from those areas are certainly open to looking at it. It would be advantageous for the government. We keep talking about finances here, but I think you are not without knowing that the government has to, among other things, send the supervisory officers to these areas. The government has to buy services for some of these students, and if they were next door, if they were attached to the Ottawa-Carleton French-language school board, there might be a better pooling of resources and the services could be offered from the existing board.

That is why we feel that the option of opting in, if you want to call it that, should not be a closed one. It makes more sense to look at it than to not look at it if the people desire it. It is not to be imposed, but the option should be there.

As far as finances are concerned, you will note that I did not mix my Ottawa Roman Catholic Separate School Board trustee hat with my chairman of my region hat, and I did not address the issue that was given to me in camera.

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Mr. Allen: Perhaps I could have a couple of very quick comments. First, the minister has used the language he has consistently used with respect to the level of financing and the relationship to services provided, and that is that it will be at the level to which people have been accustomed. I remind him that the level to which people have been accustomed is different depending on which board they have been coming from.

I would like to know, quite frankly, and I think the people who have been before us would like to know whether the funding is going to be at the average level for the region in that respect on a per student basis, whether it will be at the maximum level to which students have been accustomed or whether it will be a figure somewhere in the middle, in between. The government must have in its mind which of those three options it is going to go for, and I would like to know which it is.

Second, the minister has made a very historic statement this morning. I do not know whether everybody has been aware of it. He just said, "There is no doubt in my mind that there will be other regional French boards in this province." He has never said that before.

Ms. Gervais: So I noticed.

Hon. Mr. Ward: Yes, I have. You have not been listening.

Mr. Allen: No. You have said you have not closed your mind to the option. There have always been qualifiers. People must remember what an immense struggle it was, in the context of Bill 75, to get the previous Minister of Education—I had to virtually put our votes for Bill 75 on the line with the minister in order to persuade him to appoint a commission to even look at the possibility of implementing French boards outside the Ottawa-Carleton area. Here we have a statement that says, point-blank, "There is no doubt in my mind that there will be other regional French boards in the province." I congratulate the minister. I think that is marvellous.

Let's go back to my previous question.

Ms. Gervais: I think Mrs. O'Neill will probably tell him that I do not forget easily, so I intend to keep this one engraved.

M. le Président: Madame Gervais, nous vous remercions beaucoup de votre présentation.

Mme Gervais: Je vous en prie. Nous vous remercions et je vous ferai parvenir le texte.

Mr. Chairman: The next delegation is Jacqueline Legendre-McGuinty, who is a trustee of the Carleton Roman Catholic Separate School Board. Ms. Legendre-McGuinty, welcome. I would be grateful if you would state your name and so on.

JACQUELINE LEGENDRE-McGUINTY

Mme Legendre-McGuinty: Monsieur le Président, Monsieur le Ministre, membres du Comité, je suis Jacqueline Legendre-McGuinty, conseillère aux écoles séparées de Carleton, représentant la municipalité de Gloucester. C'est en mon nom personnel que je désire m'adresser à vous au moment où tous ensemble nous nous penchons sur certains problèmes susceptibles d'enrayer, ou du moins retarder, l'établissement d'un conseil scolaire de langue française dans la région d'Ottawa-Carleton, projet que j'appuie personnellement à 100 pour cent.

Je n'ai pas fait de recherches approfondies ni consulté d'expert en droit, ce sera le devoir des surintendants de nos conseils de faire cela; mais je suis inquiète lorsque je considère les attitudes négatives qui subsistent vis-à-vis de la création de ce conseil.

Il y a deux aspects qui semblent préoccuper beaucoup de gens. Le premier, c'est la création d'un seul conseil groupant et un secteur catholique et un secteur public. Pendant un certain temps, on a parlé fortement contre ce modèle. Certains maintiennent encore l'attitude de vouloir protéger la foi des catholiques francophones, et à cet effet on invoque comme raison la constitution. Je n'ai aucune crainte à ce sujet, car si le projet de loi 109 stipule clairement, et je dis bien stipule clairement, et les droits acquis des catholiques - l'article 93 de la Charte de 1867 - et leur droit à une éducation en langue française - l'article 23 de la Charte des droits et libertés. La création du conseil de langue française ne crée plus de problèmes constitutionnels, comme certains le supposent, mais il s'impose que cette précaution soit prise et bien écrite dans la Loi 109.

Nos étudiants catholiques qui ont dû fréquenter des écoles publiques au secondaire, soit par contrainte financière ou autres raisons, n'ont pas pour cela changé leur affiliation religieuse. La même mesure s'applique d'ailleurs aux anglophones catholiques qui choisissent le système d'éducation public, avec la différence que pour eux, c'est simplement une question de choix, alors que pour les francophones, cela devient plus compliqué. C'est une question de droit, un droit contre lequel tous semblent vouloir se prononcer.

Lorsqu'on regarde sérieusement les obstacles à l'établissement d'un conseil francophone dans la région, il n'est pas nécessairement question de religion ou de langue mais bien d'argent. C'est là que les opinions diffèrent, et c'est là aussi que s'avèreront difficiles et amères les négociations futures. C'est un autre aspect que je veux apporter à votre étude.

Un sujet qui, pour certains, semble minime mais qui, d'après moi, demeure assez important est le partage des biens lors de la séparation officielle des francophones du système scolaire actuel. La Loi telle qu'écrite dit que les écoles servant à l'enseignement d'étudiants francophones doivent être transférées au conseil scolaire de langue française.

Je crois sincèrement que les vieilles écoles apportées au conseil en 1969 et ne servant plus nécessairement à l'enseignement d'élèves francophones, pour diverses raisons, mais qui sont quand même utilisées par des services francophones, soit pour le logement d'administrateurs, de surintendants, de conseillers pédagogiques ou de personnel préposé à l'entretien, ces mêmes écoles devraient être automatiquement transférées elles aussi au conseil francophone. Si l'on considère que ces vieilles écoles, transformées pour d'autres fins éducationnelles, sans pour cela être spécifiquement pour l'enseignement, font quand même partie de la contribution importante des francophones au conseil actuel, c'est une preuve à l'appui de la participation historique des contribuables francophonés catholiques de la région.

Si cette méthode de transfert automatique d'écoles d'origine francophone, habitées ou non par des élèves actuels, était respectée, la division des biens serait très simple et n'entraînerait qu'un minimum de négociation. Si le contraire se produit, et je connais les parties impliquées dans ce partage juste et équitable des biens, ce sera négociation sur négociation pour finir par l'arbitrage, la médiation ou autres processus dispendieux.

Avec l'avènement d'un conseil francophone, beaucoup de temps devrait être alloué à l'éducation des enfants, à la préparation de programmes et à d'autres ajustements importants à ce moment-là, et un minimum de temps réservé aux problèmes pécuniaires, ce qui semble être une des préoccupations primordiales de tous les conseillers scolaires, indépendamment du conseil au

sein duquel ils siègent. Ce qui m'amène à ma dernière intervention, que je ferai en anglais.

To satisfy the basic needs of all concerned towards the education of their own children, whether they are French or English, from the separate board or a public one, the money allocated as a starter grant, a make-up grant or whatever other grant you can call it, has to be fair. The only way this can be achieved is by the province. Since locally our tax base is so different and totally unfair, the boards that have the money do not want to give it away willingly, and the other boards do not have it to give away, although they may approve of the creation of the French school board.

What is needed to rectify this unfortunate situation is the pooling of commercial and industrial taxes in the region. This could well be your number one task as a committee after recommending the creation of the French school board in Ottawa-Carleton. With this fair and equitable approach, I am sure that negotiations and demands of all school boards in the region would be kept to a minimum and that all students will get their fair share of equality of education. A francophone board in this region is far overdue and will well serve the needs and aspirations of the francophones. Thank you very much.

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M. le Président: Merci beaucoup, Madame Legendre-McGuinty.

M. Beer: Merci. Je ferais remarquer à notre collègue Dalton qu'il est bon d'avoir une McGuinty qui parle si clairement, si brièvement, toujours à point. Je ne sais pas si mon collègue partage mes opinions, mais de toute façon, je trouve que vos commentaires étaient très intéressants, Madame Legendre-McGuinty.

J'ai une question, peut-être aussi des commentaires. Je me rappelle la fin des années 60 et le début des années 70. Je travaillais avec M. Bériault à l'époque, et puis avec le professeur Symons, sur la législation qui a établi d'abord la base des écoles de langue française, puis après il y avait des changements. Tout le monde était au courant à ce moment-là du fait que ce n'était pas parfait, qu'il y avait d'autres choses à faire. On a même discuté en comité de l'idée qu'à un moment donné, surtout dans la région d'Ottawa-Carleton, il faudrait absolument créer un conseil scolaire de langue française. En écoutant les présentations d'hier et d'aujourd'hui, je pense que tout le monde comprend que dans la nouvelle législation, il y a des problèmes; peut-être que d'un côté on voit certains problèmes et d'un autre côté, d'autres problèmes.

Mais ce que je me demande, c'est que si nous n'allons pas de l'avant avec ce projet de loi, est-ce que ça va causer une autre série de problèmes et est-ce que le conseil francophone va vraiment être créé? Lorsqu'on fait des changements, lorsqu'on crée quelque chose de vraiment nouveau, comme ce conseil scolaire, c'est difficile pour les gens. Je peux comprendre les francophones qui appuient le secteur public, par exemple, après toutes les grandes discussions à la fin des années 60 et au début des années 70, quand il fallait que la population francophone fasse un choix entre la religion et la langue jusqu'à un certain point, n'est-ce pas? Et ici, est-ce que certains débats risquent de recommencer?

Je voudrais entendre vos commentaires sur cet aspect. Est-ce qu'il vaudrait mieux mettre le nouveau conseil sur pied, sachant fort bien que l'an prochain ou dans deux ou trois ans, il faudra faire d'autres amendements sans

doute, mais après avoir créé un conseil qui nous menera, à la longue, à quelque chose de qualité?

Mme Legendre-McGuinty: Je me permets de répondre. Je crois que j'ai dit dans mes recommandations à votre Comité qu'il pourrait se pencher sur les autres sujets, les autres problèmes après avoir recommandé au ministère la création du conseil francophone. Je sais que ces choses-là, ça n'arrivent pas sans anicroche. Mais d'un autre côté, en premier, l'installation du conseil francophone; après, on décidera des autres possibilités. Il faudrait quand même que ce conseil francophone soit protégé, pour quelques années du moins, si ce n'est pour toujours. Mais en premier, la création du conseil; après, on verra à d'autres choses. C'est pour cela que je suis ici pour appuyer à 100 pour cent ce conseil-là, même si je constate que dans le projet de loi il y a des petites choses, pas des grosses choses; ce sont des choses qui peuvent être améliorées.

Mrs. O'Neill: Merci, Madame Legendre-McGuinty, for your brief. Will you be presenting it to us and tabling it with us? Is that possible?

M. le Président: Est-ce que nous pouvons avoir un mémoire écrit?

Ms. Legendre-McGuinty: The clerk asked me for it. I was still working on it at 10 o'clock this morning. I was trying to make sure I was not making any big mistakes. I will have it typed and give it to him, or send it.

Mrs. O'Neill: OK. If that is inconvenient, we do have a copy through Hansard. I just wondered if you were presenting it.

I was most interested in one very brief comment you made, but I encourage you to make it more loudly. That is your comment about the necessity to concentrate on that which will be the curriculum of the new French-language school board. I think, if I am not incorrect, you are the only person who has mentioned that word.

It is not going to be easy, I am sure, because you have pointed out to us, to meld the thinking, the curriculum and all that goes into the development of programs of four separate school boards into one. I appreciate your highlighting that, even mentioning it in your brief. I encourage you to speak to your fellow trustees and to continue, if you have further input to us on that matter, to communicate with the ministry, because I think we will need to provide, and certainly the boards that exist will have to provide, support to that very important endeavour of every school board. So thanks for bringing that to our attention.

Ms. Legendre-McGuinty: May I respond to Mrs. O'Neill?

Mr. Chairman: By all means.

Ms. Legendre-McGuinty: It seems that, without neglecting the students' programs, right now we are spending so much time on other things and, what I deplore, especially money. It seems that money is the source of all evil. Of course, we know that. But with the formation of this new board, as Mrs. O'Neill said so well—I am sorry I did not elaborate more on that—I find that more time is needed to prepare all this. A lot of time will be required, and these trustees and the administration that will look after this new board will surely have more time to spend on that than they should. That is why I said it is the province's responsibility to look after the financing.

Mrs. O'Neill: I will have to correct Hansard. I said four separate boards; I should say four distinct boards. I would not want anybody to get the interpretation that I was seeing double, so please correct Hansard immediately.

M. le Président: Madame Legendre-McGuinty, nous vous remercions de votre présentation.

Mme Legendre-McGuinty: Je vous remercie de m'avoir écoutée.

Mr. Chairman: For the committee, I remind you that we have a working lunch and it is in the Carleton Room at 12:30. We looked for an Ottawa-Carleton room but could not find one.

For the people who are here, we have a recess until 1:30. We then plan to meet until six o'clock, and as I think most of you now know, the hearings will continue next Monday after routine proceedings at the Legislature in Toronto. We now recess until 1:30.

The committee recessed at 12:08.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON

THURSDAY, MAY 26, 1988

Afternoon Sitting

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, May 26, 1988

The committee resumed at 1:31 p.m. in the ballroom of the Skyline Ottawa.

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
(continued)

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON
(suite)

Consideration of Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Etude du projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

Mr. Chairman: This is the standing committee on social development and these are hearings on Bill 109. I will repeat my information for those who need it, that is, the English channel of the interpretation receivers is channel 7 and the French channel is channel 8. The interpretation receivers are available over there.

I would mention to this delegation and to anyone else who might be presenting that we regret it, but we have tried to give each group 30 minutes. That includes the questions. We would be grateful if you would try to keep to that. In this case, if I might say, this is a long brief and I do hope you will simply address the salient points. I do welcome you, of course.

The last thing is that I would be grateful, before you begin, if each of you would give your name and affiliation into the nearest microphone for the benefit of the translators and Hansard.

Mr. Allen: I have a point I wanted to make and I would like to do it before we get into any proceedings.

Yesterday Mr. Jackson proposed that we have a session with the Attorney General's office on the question of constitutionality. I wonder if it would be possible for the committee to secure copies of the studies that have been done on that issue for our advance briefing.

There was, for example, a major study of the constitutional question relating to the board structure done for the Roy commission by Gerald Beaudoin at the University of Ottawa. There was a previous major study done by M. Fouché. I know there were several other legal opinions that were sought and received by various groups.

It would be useful for us to have copies of them to look at so that we will be prepared with our documentation prior to sitting down with the Attorney General, so I just ask that through the chair for the benefit of the committee.

Mr. Chairman: Can I assume Mr. Sterling has no objection to that? That is fine.

Mr. Campbell: In order to give this attention, and because we have such a long afternoon—I am not going to make it longer—perhaps, rather than reading your brief, because we do have it before us, I am wondering if I could re-emphasize the point the chairman made about the salient points, even the recommendations, so that we have a chance to properly question you as to your reason for presenting certain recommendations. My sense is that we would be further ahead if we could do that.

If that is agreeable to the rest of the groups this afternoon—and I know they are not all here yet—I would appreciate it if we could change the format a little bit, because I find it difficult, when I can read reasonably well, to be able to sense that. I do not mean that by way of any other suggestion, but we can get discussion rolling with each group. I do not want to limit it, but—

Mr. Chairman: I will try to develop that point. In the case of this group, from the nods I receive and from the length of their brief, I think that is exactly what they are going to do.

Mr. MacDonald: We will attempt to shorten it somewhat, because some of the quotes and so on that are in there, as you say, you can read, and we are not going to repeat them. Most of the other stuff we would like to get into because we think it is essential. It is a very complex situation. We have worked on it for over a year in the Ottawa-Carleton area. We are one of the principals in the matter. We would appreciate having the time to present it in the fashion we would like.

Mr. Chairman: All I can say is, again, from when you start—we are certainly not cutting into your time—it is half an hour. We do have delegations until six o'clock, as you know, and we have to bear them in mind. Many people have arranged their day so they can be here at a certain time.

Mr. MacDonald: We understand that.

Mr. Chairman: Again, gentlemen, perhaps we could start with this mike. Could you just give your name?

CARLETON ROMAN CATHOLIC SCHOOL BOARD: ENGLISH SECTOR

Mr. Byrne: Derry Byrne, superintendent of administrative affairs.

Mr. MacDonald: Basil MacDonald, chairman of the English sector.

Mr. Lamarche: Art Lamarche, vice-chairman of the Carleton board—not the sector but the board itself.

Mr. MacDonald: The trustees of the Carleton Roman Catholic School Board: English Sector welcome this opportunity to make representation to the standing committee on social development in respect of Bill 109.

Briefly, the Carleton Roman Catholic School Board: English Sector encompasses an area of some 1,100 square miles and serves an estimated 65,000 English Catholic ratepayers within Cumberland, Gloucester, Goulbourn, Kanata, Nepean, Osgoode, Rideau and West Carleton. The board provides a comprehensive range of educational programs and services for 17,353 English-language students within 32 Catholic elementary and five Catholic secondary schools.

In this presentation, the English sector of the board wishes to confirm our support for the establishment in a constitutionally valid manner of a French-language board that would provide to an estimated 30,000 Catholic francophone ratepayers within this board's jurisdiction an opportunity to fully govern their own educational affairs without derogating, abrogating or abridging their constitutional and acquired denominational and linguistic rights.

In our representation, we seek explicit and comprehensive assurances that the means chosen to attain these ends for our francophone ratepayers do not in any way do violence to the constitutional and acquired rights of the Roman Catholic separate school supporters in general, which have so recently been reaffirmed.

While we are reasonably confident that the Legislature intends no such prejudicial effect, we are mindful that implicit understandings among those vitally involved on a day-to-day basis in the development of this historic bill must inexorably fade and become obscured with the passage of time. For this reason, we are firmly of the opinion that the legislation must be amended to provide, explicitly and clearly, the necessary constitutional safeguards, which will not only engender broad support for this policy initiative today, but will also enable the bill to withstand the scrutiny of future generations.

In our brief remarks to the committee, we will not attempt an exhaustive clause-by-clause analysis; rather, we will focus on certain major principles and processes. Specifically, we wish to address the requirement for constitutional validity; the requirement for equitable financial mechanisms to ensure equality of educational opportunity; and, finally, we wish to comment on certain specific provisions of the bill relating to the dispute resolution process and those relating to the transfer of assets and personnel.

Looking at the requirement for constitutional validity, the Ontario Court of Appeal, in the 1984 minority-language education rights reference, stated—I will not read it.

The Carleton Roman Catholic School Board: English Sector basis its support for the establishment of a French-language school board in the regional municipality of Ottawa-Carleton on this fundamental understanding that the section 23 charter provisions confer an additional right upon supporters of denominational schools. Consequently, great care must be taken to ensure that the administrative structures proposed for the implementation of the language rights provided under the charter comply with the requirements of the Constitution Act of 1867 and of section 93 in particular.

The legislation must be an effective means for the implementation of the language-of-education rights provided for in the Canadian Charter of Rights and Freedoms without infringing upon the denominational rights of Roman Catholic separate school supporters provided for under the Constitution Act of 1867.

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We are also mindful that constitutional rights can neither be bargained away nor lost through nonenforcement and that any interested party can at any time instigate litigation which would call into question the constitutionality of this piece of legislation. This fact, we recognize, places a tremendous onus on the members of this committee.

While we acknowledge that the Carleton Roman Catholic School Board: English Sector may not be as directly affected by the provisions of this bill as is our francophone counterpart, we are very directly affected by the constitutional implication for governance of separate schools and by those provisions relating to educational finance, the transfer of property and personnel and the resolution of disputes.

For these reasons, the Carleton Roman Catholic School Board: English Sector wishes to impress upon the members of the standing committee on social development that, in our view, it is essential that the objects of the proposed legislation be carried out in a constitutionally valid manner and in such a way that equality of educational opportunities is not financially prejudiced.

It is our belief that to attain these ends the bill must not diminish the degree of control that Catholics may exercise over their denominational schools. In this regard, we note that the main thrust of the bill is to confer upon the public sector and upon the Roman Catholic sector of the French language school board, the management and control of their respective schools. Certain powers are to be allocated irrevocably. Other powers are allocated exclusively to the sectors but may, by agreement of each sector, be delegated to the full board. Certain powers are within the exclusive jurisdiction of both sectors but require a double majority for their exercise. Certain other powers are allocated to the exclusive jurisdiction of the full board.

With respect to the distribution of powers, section 4 of the bill allocates most powers to the exclusive jurisdiction of the respective sectors. However, by virtue of section 4, it would appear that the sector trustees will not have full ownership and control of schools and other facilities since these are to be allocated by means of a majority vote of both sectors and are to be subject to the dispute resolution mechanism provided for in part XI.

We are concerned that in its present form the provision of section 4 removes from Roman Catholic school trustees rights of ownership and control over Catholic schools and facilities such that the bill is open to constitutional challenge. While we understand that there may be administrative reasons in support of the proposed section, in our judgement it would be more appropriate to treat these rights of ownership and control over schools and facilities just like the other powers allocated exclusively to the respective sectors under paragraph 4 and to do so in such a manner as to allow for their delegation to the full board by agreement. Therefore, it would be possible to achieve the same desired administrative objective in a manner that would be less likely to be viewed as diminishing, abrogating or derogating from the powers of Catholic school trustees.

There is also a question with respect to residual powers. It would appear that the primary objective of the architects of the bill, as expressed in section 4, is to achieve a full enumeration and allocation of powers such that anything not expressly covered will fall to the sectors rather than to the full board. We believe that this is a proper approach and is one which promises the greatest prospect for success from a constitutional standpoint. However, the wording of sections 2, 23 and 49 is such that there may be powers provided for directly or indirectly in the bill but not mentioned in section 4, which could therefore be outside the scope of paragraph 4(1)29 that would remain unallocated and could arguably be seen to reside with the full board.

Canadian legal history is replete with examples of litigation on the question of distribution of powers, consequently we believe that it would be advantageous to specify, either in paragraph 4(1)29 or in sections 2, 23 and 49, that all the powers of the Ottawa-Carleton French-language school board, in whatever manner they are provided for in the bill itself or arising from inference or otherwise, are to be distributed according to section 4 so that any residual powers are clearly assigned to the respective sectors.

Perhaps this end could best be achieved by modification of paragraph 4(1)29, since this would require the least change and would also be encompassed by the delegation mechanism provided for in subsections 4(4) to 4(9).

With respect to the mechanism provided for this delegation of certain exclusive sectoral powers, we wish to emphasize that the important issue, from a constitutional standpoint, is that the bill not set up a delegation mechanism that would at any time diminish or remove the Catholic sector trustees' full range of power and control over the Catholic denominational schools in the board.

In this regard we note that subsections 4(6) and 4(7) provide for both a time limitation and a transfer back to the sectors of powers that have been delegated. We note also that subsection 4(5) provides that the transfer of jurisdiction may be on specific terms, and that such a provision could possibly consider enabling the Catholic sector trustees to safeguard control over certain denominational matters.

However, subsections 4(4) and 4(5), respectively, provide that a transfer of jurisdiction requires a majority resolution of both sectors and that a transfer may be subject to any condition "if both resolutions so provide". However, it is not at all clear what happens if a condition does not appear in both resolutions, or if the conditions in both sectoral resolutions are not identical or to the same effect.

In other words, in either of the above circumstances, is it the transfer of jurisdiction that does not take place or does the transfer take place but the condition not come into effect? In our opinion, it must be made clear in the bill that the transfer of jurisdiction should not take place without being subject to the condition.

Reiterating our position that the final form of the bill must provide explicit guarantee of constitutional and acquired denominational rights, we wish to note the apparent good intentions of the Legislature in incorporating in subsection 1(4) of the bill the provision of subsection 1(4) of the Education Act.

We believe this limited and indirect provision should be strengthened to provide the constitutional guarantees we seek and that these should clearly and prominently be stated within the bill. In this regard also, we urge the committee to incorporate into the bill for third reading a preamble as was done for Bill 30, along the following lines— I will not read it.

The inclusion of such a preamble would provide—

Mr. Chairman: Excuse me, I am not wishing to hurry you. I am just looking at the number of pages. Where you come to a section like that, if you wish, if you would say that you would deem this to be read into the record, then we would certainly see that that was done.

I mention that to you now because, by my calculation, you will not finish in time and there may be other parts where you would like to do that to, in order that we will have some time for questions. You do understand. Even if you go the full 30 minutes, you actually will not finish at the present rate.

Mr. MacDonald: With respect, we have been asked to deal with a very difficult topic. We spent a lot of time on this and we would appreciate that the committee has time lines and so on. However, we are a very concerned participant in this whole section.

I think we should possibly get some special consideration for that. We are one of the four boards directly concerned in this and the points we are making I think are very, very valid. We will try to keep it as short as possible.

Mr. Chairman: It is clearly a very carefully prepared presentation. I do not deny that. We have to consider the other groups. We really do, in all fairness. It is as you wish. I was simply mentioning that where you do come to something like that, then read it into the record by all means. I simply thought that might like to think that out a little beforehand as you go.

Mr. Sterling: This board is probably affected by this bill more than any other board in the Ottawa-Carleton area and I think we have to take that into account.

Mr. Chairman: Again, Mr. MacDonald, we will certainly do all we can. I interrupted at this point simply to give you the time to spread out the items you would like to read into the record.

Mr. MacDonald: We thank you for that. We have deemed that portion to be read then.

The inclusion of such a preamble would provide a clear statement of historical purpose, scope and constitutional intent and would allay fears that this legislation is, or may be considered in the future to be, a prototype for school boards in the province without reference to the implementation of the charter minority language rights. The rest of it is deemed to be read.

1350

Let us get into the requirement for equitable financing, financial mechanisms to ensure equality of educational opportunity.

The Ontario Committee on Taxation, 1967, the Mayo report, 1976, the Jackson report, 1978, the Macdonald commission, 1985, and myriad ministry studies have unanimously endorsed the need to overhaul the existing system of educational finance with a view to creating greater fairness.

The members of the committee may be relieved to hear that we will not provide an exhaustive treatment on this. However, we do wish to provide some salient background information in support of our position in respect of part IX of the bill.

The promise of full and fair funding has yet to be brought to fruition, for the question of equality of educational opportunity is directly related to disparities in assessment wealth among boards which persist. The Commission on the Financing of Elementary and Secondary Education in Ontario is unequivocal on this matter.

I will deem the next page to be read. I would just like to point out one in the second paragraph which says, "Fairness is the key consideration."

Over on page 12, the fundamental problem is that the grant mechanisms, which are designed to ensure equity, are only in operation to the ceiling established for ordinary expenditure. However, all boards in this region and most boards provincially incur expenditures greatly in excess of the ceiling.

Consider the following comparison, and I am dealing with the four boards. Under the elementary, the Ottawa Board of Education spends, per pupil, \$4,444. We spend \$3,023, a difference of \$1,421. They are over ceiling by \$1,594. We are over ceiling by \$304. In the secondary, similar circumstances: They spend \$6,174. We spend \$4,202. They are over ceiling by \$2,376. We are over ceiling by \$491. I think the figures speak for themselves.

A board's ability to generate revenues in excess of the established ceiling, however, is primarily a function of the size of the board's assessment base. Consider, for example, the relative distribution of the region's commercial and industrial assessment. Over on page 13 is a comparison of the pupil population to the percentage of commercial and industrial assessments. Again, dealing with the four boards, the OBE has 29.7 per cent of the enrolment and 74 per cent of the assessment. We have 19.2 per cent and two per cent of the assessment.

As these figures clearly indicate, and as has been confirmed by all major studies, the greatest inequities in educational opportunity result from the significant disparities in the relative abilities of the boards to generate revenue from commercial and industrial assessment.

This fundamental inequality persists despite the fact that it has long been identified.

I will not read the question from Bette Stephenson. I will deem it to be read.

In like manner, and for similar reasons, all payments in lieu of taxes should also be equitably shared among the boards.

To echo the sentiments and imagery of the Mayo report, the time has come to cut the Gordian knot and to recreate a truly equitable financial system. In this respect, with regard to part IX of the bill, we wish to enumerate certain fundamental principles which should guide and inform amendments to the legislation prior to third reading.

Firstly, the French-language school board requires a financial base of support which ensures equality of educational opportunity, as do each of the English-language boards which result. As has been pointed out by consecutive studies and commissions, this question of equality of opportunity and provision is, at base, driven by the assessment poverty/wealth of the board. In order to ensure equity, it is necessary that there be a pooling and sharing of commercial and industrial tax assessment and of grants in lieu of taxes within the regional municipality of Ottawa-Carleton on a per pupil basis. I will deem the rest of that paragraph to be read and also the remainder of the page.

Let us look at the dispute resolution mechanism and process. At the outset, we wish to state we are unsure of the precise role contemplated for the Languages of Instruction Commission of Ontario, acting as a whole or as a select panel. Given this uncertainty, it would be perhaps be wise to proceed by way of questions, the answers to which may provide the clarification we seek. I will deem the questions to be read.

We note the intention of the sections, as written, to provide specific deadlines for the various steps in the dispute resolution process. We wish to point out that, from our experience under Bill 30 provisions, the provision of strict and mandatory deadlines is an absolutely essential requirement for an effective dispute resolution process.

On the transfer of buildings and assets, subject to our earlier remarks on the questions of rights—I will deem that portion to be read. The next portion, however, I want to read.

We would note that the meaning of subsection 61(1) should be clarified by the substitution of the words "as a" for the word "by" in the second line. This is very important to us. If this change is not made, in the case of an undercapitalized Carleton Roman Catholic Separate School Board, it could result in an allocation formula, which as a first step would assign to the French-language school board assets other than functioning French-language schools, which assignment would have the effect of not leaving enough assets centrally with which to meet the requirements of section 62.

This requested change reflects the intent expressed in the explanatory note to part XII. I will deem the rest of that paragraph to be read and over on page 19.

We would like to bring to your attention a technical detail arising from the use of the word "debt" in section 61. I will deem the rest of that paragraph to be read.

The area of potential difficulty and dispute, given that the Carleton Roman Catholic Separate School Board is such a highly undercapitalized board, is the determination of what constitutes an equitable share of those few tangible assets which would remain after the transfer of functioning French-language schools. We are confident that the Legislature does not wish to create a situation where the English-language Carleton Roman Catholic Separate School Board would have to assume an additional and new financial liability and/or an increased debt load as a consequence.

Fundamentally, at this juncture we are missing a piece of the puzzle because we do not know the extent of the government's own financial commitment to the success of this historic policy initiative. We will deem the rest of that paragraph to be read.

On the transfer of staff, it is our understanding that all employees who are currently in the exclusive service of the French-Language Education Council of the Carleton Roman Catholic Separate School Board will transfer to the employment of the French-language school board under the jurisdiction of the Roman Catholic sector and that necessary arrangements are to be effected for their assignment.

Furthermore, it is also our understanding that other central staff who may be displaced as a result of the establishment of the French-language school board are to be identified by each board and their transfer effected by

means of agreements among all the five boards in consideration of the needs of the French-language School Board for personnel. We will deem the rest of that to be read on page 21 and on page 22, down to the second paragraph.

1400

The Carleton Roman Catholic School Board: English Sector believes that either a correction or clarification must be provided with regard to financial responsibility for retirement gratuities under section 73 of the bill. In our view, fairness dictates that the unfunded liability attendant upon the staff asset transferring or remaining should be treated in a manner similar to that proposed for the transfer of capital assets and liabilities.

In other words, the English-language board should not be required to shoulder the entire responsibility for past service when a portion of the supporting tax base and assets are being transferred away. Consequently, the responsibilities should be assigned exclusively to the French-language school board for those staff who are in the service of the French-language instructional units exclusively, and to remaining English-language board for those staff who are in the service of the English-language instructional units exclusively.

In like manner, the liability in respect of those staff who serve both sectors should be actuarially determined on a pro rata basis, and the appropriate sector reimbursed or credited in the general process. The current provisions of the bill must be amended so as to ensure an equitable assignment of this unfunded liability to each of the parties.

We are not presently in a position to give a more comprehensive analysis of the impact of the provisions for the transfer of personnel as we are not yet aware of the planned organizational and administrative structure of the French-language board. However, we do anticipate that we will experience a disproportionate increase in administration costs as a result and, as we have argued earlier, compensatory financial provisions must be established to account for this feature.

In closing, Mr. Chairman and members of the standing committee on social development, on behalf of the Carleton Roman Catholic School Board: English Sector, I wish to express appreciation for the opportunity provided to respond to this historical piece of legislation.

We are cognizant of the critical role that the members of this committee play at this stage in the development and preparation of legislation. We trust that our intervention may be of assistance to you. It is our earnest hope that the legislation in its final form will reflect careful consideration of those constitutional and administrative concerns which we have addressed to you in such a manner that the final bill will warrant our wholehearted support, not only in principle but also to the effective implementation of the policy.

Mr. Chairman: Thank you and your colleagues. I appreciate your patience and I am sorry to move you along. The items you mentioned will be read into the record.

Charles Beer, then Sterling Campbell.

Mr. Beer: I would like to thank the gentleman for the presentation. Perhaps, if we were presenting awards, Mr. Chairman, we could say best deemed presentation on this day.

I would like to focus my question on the disputes mechanism. Just to make sure that I understand, and I have had a chance to look at the questions which are deemed into the record, I suppose the fundamental difficulty here is in exploring how to resolve the disputes.

We are making use of a body which was originally set up for somewhat related but none the less somewhat different purposes. What would be fundamental for you, as it evolves from the questions, is that when it goes about its job, the membership, the mandate and the timing be very clear and that that really be worked out ahead of time so that people know what it is that they are getting into.

Would it be fair to say that those three sorts of areas are critical? You want to make sure, whoever it is who is actually trying to resolve the dispute, that the membership is fair in the composition of the group and that it is not something that is going to go on for ever, that it is important to have a set of time guidelines.

Mr. MacDonald: You seem to have captured some of our concerns there. I do not know that I want to say much more than that on it, because I always like to read my questions put in front of me before responding to them. But question 6 is, why is the application of the Arbitrations Act specifically excluded from a process which culminates in arbitration? I am not looking for an answer now. It is just that we find it odd, as we do the other ones.

Mr. Beer: Right. I think those are certainly questions that we will be asking ourselves and indeed are questions which have arisen earlier as well. I think it is critical that those involved feel comfortable with whatever mechanism we have. I appreciate the points that you have raised here. Thank you.

Mr. Campbell: Might I say that it is a basic truism that Campbells and MacDonalds do, in fact, get along very well. I want to make sure that the chairman did not misconstrue what I had to say about brevity.

I am concerned that a number of boards have addressed the question of fairness and equity in transfer of staff. I have sort of honed in on that point, because I am concerned that there is a concern. Where do you see in the act that it is not clear how this process would take, given that there would be a lot of local input into the process of the negotiations?

Mr. MacDonald: I will ask Mr. Byrne to answer that.

Mr. Byrne: There is concern being expressed by the board in respect of the staffing provisions, and we are quite aware of the amount of work that has gone into it and the similarity with the provisions that were provided under Bill 30 generally. We first indicate that the type of concern we have is that it does not seem that the process being set up is clearly indicated. If I can refer to subsection 66(1), it is not clear from the language of it whether that is a function that the new French board, which does not exist, and all four existing boards, made up either of the boards independently or of the eight boards and the French-language education councils, are going to sit down in this period of time to decide (a), (b) and (c).

It would appear to us, as we point out, that one of those functions is more clearly the job of each board or each sector severally. The other is properly a function of the French-language school board, in our judgement. It

is not clear from the language of the bill that is the way it is going to be done. We say the bill seems to provide otherwise. It is that type of lack of clarity.

The second point we make is that we existed under Bill 75 long before Bill 75 came into existence. We have completely distinct and unique sectors, completely distinct and unique historical patterns in collective bargaining, and the provision for the right of first refusal, which we understand and agree with in respect of any displaced central staff, is a logical inclusion. It is also logical that might be included and will satisfy some of the other boards in the area, because they happen to have single collective agreements and single seniority provisions. In our instance, it would confer upon one of the bargaining groups an additional benefit that it does not have now simply by the implementation of this bill, to the detriment of the anglophone teachers' group remaining. Those are the concerns we raise.

The third relates to the issue of unfunded liability for retirement gratuities.

Mr. Campbell: I have one last question because I want it clarified here as to what you are speaking of. You are speaking of two separate and distinct pre-Bill 75 sections. Why then would it not follow that the assets that would remain with the anglophone section or board, if you want to call it that, or the francophone section or board—it would seem to me it is even clearer that it would be a very distinct sort of separation and both would go their own ways with their proportions of all the assets, liabilities and everything else.

I come back to the point of why there is still a concern here. If you are in two separate and distinct units, beyond central staff—I understand that there is some central staff that, proportionately, would have to go—the basic premise of your assets and liabilities would be fairly easy to split off because of the situation that exists in your board.

1410

Mr. Byrne: We agree wholeheartedly with the comments being made by Mr. Campbell. We find that the bill itself does not provide specifically the intent as expressed by him and as we have been assured by several of the people who have been involved in drafting it. If you read, for example, section 73 very carefully, that is not what it does. We would agree that it should do what you said it should do and that the staff asset and staff liability should be treated in exactly the same way as the capital asset and capital liabilities.

Mr. Allen: Thank you very much for your brief. It was very carefully developed for us and I appreciate the information in it. I would want to assure you that the committee is going to be looking very scrupulously at the whole question of constitutionality, the division of jurisdictions and so on. In that context you might enlighten me, because you did refer to paragraph 4(2)3 as potentially undermining the control of the French Catholic section in controlling the school facilities that would be under its jurisdiction. I just wondered how that could happen when there would have to be a majority of those members assenting to any such allocating process or allocation of given facilities.

Mr. MacDonald: I would ask Mr. Byrne to reply to that.

Mr. Byrne: We would have the same problem in respect of paragraph 4(2)3 specifically, as to what is the real meaning of allocation. We have taken some legal counsel on this matter and we have been advised that arguably this matter could be seen to diminish the real authority of separate school trustees to control their own facilities. We are saying to you that if you were able to overcome that, and if in your considerations and deliberations you address yourselves to that, it would remove what we consider to be an odious feature of the bill and one of the grounds on which somebody may question the constitutionality of the bill.

The question is who owns facilities? Are the facilities owned by the sectors or are they owned by the whole board? As we indicate in our brief, we see no difficulty in the idea of Roman Catholics transferring to the Roman Catholic sectors the ownership of certain facilities that exist right now. If it becomes a matter of transferring to another entity which is not a Roman Catholic school board, we may have a difficulty with that at law. We would prefer that you do the alternative, follow the general direction of the bill and allocate the ownership to the sectors, but allowing it in that area which would allow their reallocation, reassignment, their loan or appropriation, or what have you, by agreement to the use of the purposes of the whole board and thus escape having to deal with that issue of ownership. That also might allow you to deal at some future point in time with the matter of how does a sector go about attaining its capital requirements.

Mr. Allen: We can certainly look at that closely and take that argument into account and also look at your other suggestion, which is the question of time allocation and transfer-back options, which would make it necessary to go through at least a formal decision as to whether that had been a proper decision in the past as each new board comes into existence, for example, or some such process.

I appreciated your comparison for pupil expenditures. I thought that was a good hard-hitting set of statistics and they certainly drive the point home very carefully. Might I just briefly ask you to explain again for me the significance of changing "as a" to the word "by" in the second line under transfer of buildings and assets. You refer to a first step which would assign the French-language school board assets. Your concern is that that first step, apparently, not include any assets other than actual school buildings. At what point, is it proper to deal with the question of other assets which may be necessary to the functioning of the new board and how would that happen if you exclude that from this process in your view?

Mr. MacDonald: We have gone through that area of the instructional units and we have come to an agreement between the sectors on that. There is no problem there. It is the remaining "and that," "as a" and "by" that would appear to broaden the interpretation we are getting from the Ministry as to what should be turned over on French instructional units. In other words, the rest of the buildings and so on belong to the board. It then becomes a matter of what is equitable and fair. This is not defined and it is a real problem to us. Derry Byrne might want to elaborate on that.

Mr. Byrne: It would appear, Mr. Allen, that the process that is set up works in two parts. It says, first of all, do some fundamental assignment of existing schools. Then look at whatever is left in the middle and come to some determination through a process of bargaining or negotiations to determine what is a fair and equitable contribution based on that remaining asset.

The difficulty we face is that we are a terribly undercapitalized board. I do not know if you know how badly undercapitalized we are, but I suspect you may have some sense of it. The operative words in that line are "school site", because "school site" has a definition under section 1 of the Education Act which encompasses far more uses of real property than merely schools. It includes such areas as administration areas or campus, residence for custodial staff or depots or what have you. If the first step said all the assets that are used by French-language instructional units, that is, by extension, for any other purpose including schooling, are transferred away at the first instance, we are left with no residual assets—or few, I should say, not none. We would have our main board office. That would be our residual asset on which to base our equitable contribution.

Let us just say, for the sake of argument, that an equitable contribution is going to be determined on the basis of proportion at ADE, average daily enrolment. Let us assume it had a value of \$2.5 million, for example. Where do we get one third of that to contribute our equitable portion if that is the only remaining asset?

Clearly, if you read the explanatory note to part XII, it says, used as schools." When we talked to the ministry personnel and to the personnel who were involved in the drafting of this, it is clear that was the intention of the drafters, that at the first level in this process, schools that are in use as schools are definitely gone to each sector, and then on the basis of anything that is remaining, they are going to come to some determination, either amicably and through local discussions as to what is an equitable portion or, if absolutely necessary, through a dispute resolution mechanism to finally arrive at what is the equitable portion.

Our concern is that if the law does not clearly capture the intent, we will have nothing, or little, left in the middle with which to meet the next provision, namely, section 62, to make an equitable contribution, and we will have to incur additional liability or additional debt in order to enact this board.

Mr. Allen: Have you proposed a formula whereby that equitable portion might be determined? What kind of clarity can we reach in the context of the bill—

Mr. Byrne: I do not think it—sorry, I did not mean to interrupt—is necessarily appropriate that we sit down and define "equitable" inside such narrow parameters that you are going to effectively preclude bargaining between the parties. If the law is clear as to what is at the first step and what is at the second step, I think the parties, working in their mutual interests, are capable of arriving at that themselves.

Mr. Allen: Thank you.

Mr. Sterling: Having represented that area, I would like to thank the Carleton Roman Catholic Separate School Board for coming in front of the committee.

As you may or may not know, when Bill 30 did pass or did go to third reading, I asked the government of the day, which is the present government, whether they would consider unified school boards. At that time, the answer I was given back was that it was unconstitutional. We now have a piece of legislation, Bill 109, which is in front of us, which attempts to do what they said could not be done back in 1986.

Given that the Carleton Board of Education has expressed some desire to become unified or have a unified board structure with the Carleton separate school board, why could the same structure not be set up with regard to the Carleton Roman Catholic Separate School Board in terms of the English sector? In other words, what distinguishes the French community from the English community in such a concept or structure? I understand your concern with this whole matter, but I think we should put the question front and forward as to what the concerns of your board really are. I do not quite understand why it would be constitutional for the francophone people of Ontario, whereas it might be unconstitutional for the anglophone community. Do you see any difference?

1420

Mr. MacDonald: Yes, we do. In the first place, what we have always been in favour of and have promoted for some time is a French Catholic school board, as set up briefly under the Mayo commission. We have been in favour of it all along and we still are in favour of it. Then we would not be worried about section 93, and section 23 would be looked after.

What we are looking at here is a combination of these two things and it is a proposal put to us by you people, so we are looking at it. We think that given the changes we are asking for, we will not prejudice the rights of Roman Catholics.

As far as it going further than that is concerned, we would want to look at each one individually. In the first place, both the Carleton Board of Education and ourselves are very large boards in general terms. We are some 17,000; they are some 34,000. The merits of joining could be some—the dangers of losing our rights under section 93 are something we would be concerned about. It would be something we would look at, of course, if you passed a bill on it. We are not prepared to advocate it at the moment.

Mr. Sterling: In terms of my question, is there anything you can distinguish between this kind of structure for an English system, regardless of whether it is the Carleton separate school board or any other anglophone separate school board in Ontario, and another public school board. Quite frankly, I do not quite understand the distinction the minister is making at this time. I think that is why your concern arises over this particular piece of legislation.

Mr. MacDonald: I do not agree with you, Mr. Sterling, in all fairness. Our concern is to provide our francophone people with their own governance, which we think they deserve. We also want to protect the Catholicity of that, not only in their board but in ours.

I do not want to deal with the legality of what might be done and so forth because that is a matter we can take and debate. We could come back to you another time on that. Those are our concerns. We have long made the point that we think the francophones should have their own governance. We are particularly talking here about the Catholic francophones because they are our immediate concern in our board. We still think that.

We think, however, that these changes we are advocating would make it acceptable to us and we would then be prepared to go wholeheartedly and back that board as changed.

I do not want to really deal with your question on the legality of it, as to whether we should amalgamate with the Carleton Board of Education or others or whether we should amalgamate with any other board either.

Mr. Sterling: I guess one of the problems the taxpayers of Ottawa-Carleton face is the initiation of the fifth school board in the Ottawa-Carleton area. Some citizens of the Ottawa-Carleton area are starting to look over their shoulders and are saying, "It's time for an amalgamation of some of these entities." Therefore, some people are looking for your amalgamation with the Ottawa separate school board and some are looking for some other kinds of amalgamations. How many administrations can we afford, as taxpayers, in this area? Now, you cannot have it all ways in terms of splitting up the pie into smaller and smaller pieces.

Mr. MacDonald: At the risk of being a little facetious, I think if you want to have economy, you should put them all under our board because we are operating at much less than any other board in the area. The idea that amalgamating boards leads to a reduction in costs, I think, is fallacious.

Mr. Sterling: Therefore, the conclusion I come to, in terms of your statement, is that given the changes you suggest in your brief with regard to the maintenance of the constitutional rights, the position your board takes is that, regardless of language differentiation, a unified board as created under Bill 109, if you call it that, is acceptable.

Mr. MacDonald: No, that is not our position. Our position is what we have stated in the brief.

Mr. Chairman: Mr. MacDonald, Mr. Byrne and Mr. Lamarche, thank you very much indeed for your presentation.

Our next delegation is from the Ontario Secondary School Teachers' Federation, district 26. If they would come forward, I would be grateful.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION DISTRICT 26

Mr. Chairman: Do members of the committee have this brief today?

I would be grateful if, before you begin, you would each say your name and affiliation into the nearest microphone for the benefit of Hansard.

Ms. St. Amand: My name is Doris St. Amand.

Mr. Leblanc: My name is Roger Leblanc.

Mr. Ouimet: I am Bob Ouimet, president-elect, district 26, OSSTF.

Ms. St. Amand: The Ontario Secondary School Teachers' Federation wishes to express its appreciation to you for this opportunity to share with you our reaction to Bill 109.

OSSTF represents more than 35,000 teachers. As a teachers' federation, we have a clear interest in the welfare of students and teachers in the publicly funded secondary schools of Ontario. We welcome this opportunity to reaffirm our previously held and long-standing positions, namely, that it is the right of Ontario parents to have their children educated in the Canadian official language of their choice, that it is the duty of education

authorities to provide suitable facilities to do so at all levels of education, that it is the right of the francophone minority to govern its own schools and that the most appropriate mechanism to implement school governance is through the concept of a unified public school system.

With that as an introduction to our brief, I would like now to ask Roger Leblanc to take you through the brief in French.

My colleague to my right, Bob Ouimet, is the president-elect of District 26, Ottawa. Roger Leblanc is on staff with OSSTF.

M. Leblanc: Monsieur le Président et membres du Comité, je peux vous assurer que notre mémoire n'est pas de longue durée, et la raison en est que nous sommes en faveur du projet de loi 109 en principe. Ce n'est que le financement qui nous préoccupe énormément.

Alors, pour passer à la première recommandation, la Fédération des enseignantes-enseignants des écoles secondaires de l'Ontario a toujours préconisé et a toujours demandé l'existence de deux conseils francophones dans cette région, soit l'un à Carleton et l'autre à Ottawa. La raison en est que nous trouvons que deux conseils francophones faciliteraient l'intégration d'ententes collectives ainsi que l'organisation, la mise en oeuvre et le financement de programmes scolaires. Nous nous rendons compte que ce n'est pas le mandat du Comité, mais nous croyons que le Comité pourrait en faire la recommandation à l'Assemblée législative.

Et alors, la recommandation: qu'un système scolaire public unifié francophone soit établi à Ottawa et qu'un système scolaire public unifié francophone soit établi à Carleton.

1430

Passons maintenant au projet de loi 109. La Fédération des enseignantes-enseignants des écoles secondaires de l'Ontario est fière de constater que plusieurs des recommandations qu'elle avait faites au Comité de langue française d'éducation et de planification d'Ottawa-Carleton ont été incorporées dans le projet de loi 109. Toutefois, la FEESO s'inquiète surtout du fait que le projet de loi 109 ne stipule pas que tous les cinq conseils recevront à long terme suffisamment de fonds pour pouvoir continuer à offrir les programmes actuels de même que d'autres programmes scolaires jugés nécessaires.

Nous suggérons que le gouvernement augmente sa part du coût total de l'éducation à 60 pour cent afin d'établir la parité telle que déterminée par les conseils locaux; que le plafond des subventions par élève corresponde davantage aux coûts réels des programmes actuels; et que le ministère de l'Éducation, à la demande des conseils anglophones et du conseil francophone, fournisse des subventions à ce conseil.

Tel qu'indiqué, la FEESO, en principe, croit que la mise en oeuvre du projet de loi 109 serait un pas de géant qui donnerait finalement l'autonomie aux francophones d'Ottawa-Carleton de gérer leurs propres écoles. Malheureusement, il nous est impossible d'appuyer ce projet de loi avant que la question du financement ne soit réglée à la satisfaction de tous. La FEESO recommande donc que la mise en oeuvre du projet de loi 109 soit reportée au moins jusqu'à ce que le gouvernement ait terminé la révision du financement de l'éducation en Ontario.

Nous passons maintenant à quelques autres préoccupations. Bien qu'un processus permettant une grande centralisation des services soit inclus dans le projet de loi, au paragraphe 4(1), le rapport indique l'établissement de deux secteurs bien distincts. L'homogénéité des programmes linguistiques et le partage des enseignants ne pourraient être qu'améliorés par la centralisation des services. La Fédération est surtout concernée dans le domaine des négociations et des ratifications d'ententes collectives.

Alors, la recommandation: que toute entente collective soit négociée par l'ensemble du conseil et ratifiée par l'ensemble du conseil par vote à double majorité.

Nous regardons maintenant la question du droit de fréquenter une école française et nous parlons surtout des parents qui nous arrivent des pays francophones autres que le Canada. Nous croyons que le projet de loi ne parle pas de ces gens-là et nous vous demanderions de regarder de nouveau l'article 23 de la Charte, s'il vous plaît, et de penser à ces gens.

Alors, la recommandation: que la définition d'une personne de langue française, telle que reprise dans les paragraphes 23(1) et (2) de la Charte canadienne des droits et libertés, inclue les francophones ayant immigré au Canada en provenance de pays de langue française.

Parlons maintenant des crédits pour congés de maladie. Le paragraphe 72(3) du projet de loi mentionne le plafonnement de crédits pour congés de maladie dans certains cas. Suffit que le nouveau conseil négocie une nouvelle entente collective. Il est prématuré, nous le croyons, de parler de plafonnement dans ce projet.

Alors, la recommandation: que les mots suivant le mot <transféré>, à la huitième ligne du paragraphe 72(3) à la page 99, soient rayés.

Donc, en conclusion, et ma collègue vous en parlera aussi un peu, la FEESO croit sincèrement que si la question du financement peut être réglée d'une façon appropriée, le projet de loi révisé donnerait finalement l'autonomie aux francophones d'Ottawa-Carleton de gérer leurs propres écoles. Alors, nous sommes en faveur du projet de loi, pourvu que nous puissions régler la question des finances, et pas auparavant.

Ms. St. Amand: Thank you very much, Roger. We would be very pleased to respond to any questions you might have in either language.

Mr. Campbell: I have somewhat been a part of Mr. Leblanc's previous life in Sudbury as part of his presentations to the Sudbury Board of Education. I appreciate seeing him face to face rather than being beside him.

I have a couple of questions for the Ontario Secondary School Teachers' Federation. The first one is: If the people do not want a unified school board, how do you see that as being beneficial to the students? I do believe, of course, it is students and teachers you are concerned about.

Mr. Leblanc: I wonder if you could repeat that. I am sorry, but I did not follow you.

Mr. Campbell: Your first recommendation is a unified school board, a public school board for Ottawa and Carleton. What if people decide that in that jurisdiction they would not want that?

Mr. Leblanc: I think what we are finding at this point, and the reason for the recommendation, is that we are finding it has become such an administrative nightmare to try to put together the collective agreements that it would probably be easier to have two francophone boards, actually, and I really believe that the people might go for it.

Obviously, if they do not, then you have to make your decision on what the parents are saying, but we are approaching it, certainly in part, from the teachers' point of view, and the teachers would find it easier if the separate board of Carleton, the public board of Carleton and a new French board were able to work things out. It would be a lot easier than having five boards trying to do the work.

Mr. Campbell: If I might by way of supplementary, I see what you are saying. Consider, though, if there were a unified public school board—Ottawa—Carleton, for the sake of argument—and a unified separate school board for Ottawa—Carleton instead of having two different jurisdictions. What would your comments be on that?

Mr. Leblanc: I think one has to remember that what OSSTF always said was that we believe in a complete unified school board for Ottawa and a unified school board for Carleton, and we include in that the English and the French under one large umbrella if you want. So I would have no problems with that, if that is what you are asking.

Mrs. O'Neill: You talked about the jurisdiction of full board and sectors. You make the statement about homogeneity of linguistic programs and say that the sharing of teachers might better be accomplished if more centralized services were legislated. Would you be able to specifically tell me what centralized services would help that?

There is lots of room in the legislation for transfer of powers and jurisdictional rights. I would like you to be specific. I am very interested in the programming that is going to evolve from this board. I presume that, as teachers, you are very involved and interested in the meshing of four distinct historical boards into one in regard to programming, when the emphasis has been very different in some of those boards in certain areas of education. So could you be specific about this?

Ms. St. Amand: Yes. The section we are looking at in particular there is subsection 4(1), in which there are 29 different services for which governance is provided. Then that section goes on to indicate that provision is made for some of those services through a voting mechanism to be granted to the full board.

The point we are making here is that we are pleased to see that this is possible for, I believe, items 19 to 29 and, in fact, there were two items that were shifted from the consultation draft from the centralized service, which we believe are more appropriately left to the complete jurisdiction of the two sectors. They were counselling services and professional development services. We are pleased to see that the legislation was altered in that way between the time of the draft and the legislation that is before us right now.

Our point here is that we believe the legislation should mandate centralized bargaining so that the bargaining should take place through the full board mechanism, and if that is not provided for in this legislation, the option is there for that to happen, but the legislation does not prescribe it.

Since the employment contracts are being held by the corporate body, it seems to us to make sense that collective bargaining should be between the bargaining agents and the corporate body.

1440

Mrs. O'Neill: OK. Have you got anything further on linguistic programs, homogeneity of linguistic programs? You have not? OK.

May I ask whether you as a group—and I presume you have research resources at your disposal—have made any approach to the federal level of government regarding section 23 of the Charter of Rights? We have had this brought forward by several people. It is a federal jurisdictional matter. Have any of you gone to that next level of government either to feel them out, to initiate discussions or whatever?

Mr. Leblanc: No. At this point in time, we have not. I know that some of you might recall that, when we presented it to the royal commission, we brought that up at that time as well. But from our point of view, no, we have not researched that.

I do want to answer as well, if I could, the question of the homogeneity of linguistic programs. I guess one of our concerns is that if we are not careful in terms of having centralized services in some areas of programs, then some of the special-ed students may very well be affected.

I guess what we are saying is that in their case, surely we can find ways of having the board deal with the special-ed students in schools like McHugh, and in the francophone unit of McHugh as well, and it is mainly from that area that we were approaching it. The specialized programs are of concern to us and maybe should be dealt with at the level of the full board.

Mrs. O'Neill: Thank you.

Mr. Allen: I appreciate the brief that OSSTF has brought before us. I note a certain wistful dimension to it, I think: that your proposal, as I gather in your answer to the member of the committee at the far end of the table with respect to whether anybody is asking for the particular model that you are proposing, was, "No, they really are not, but they might be if somebody talked about it." But it strikes me that it does not really address an agenda that is out there the way in which the present proposal does.

Could you tell me whether, in your opinion, the more centralized, unified board that you are proposing would, in fact, meet the tests of the Supreme Court decision around Bill 30?

Mr. Leblanc: I guess that is one of the things as well that we want to mention to you. I hope the government is going to test the possibility of having the homogeneous board as being legally correct. I hope we do not find two years down the line, if the government decides to go that route, that in fact it is not legal and we then we have to backtrack. I suppose it is similar. I am not going to compare it to Bill 30, but I think it is similar, perhaps, to what you are saying.

Mr. Allen: Does your proposal not make it more likely that a bill amended in your direction will be more likely to fail the test before the Supreme Court than the one that is being proposed here?

Mr. Leblanc: I do not believe so, no.

Mr. Allen: I asked that specifically with regard to your concern about collective bargaining, which I recognize, but at the same time, a collective bargaining question obviously relates to practices in the classroom even, and pupil-teacher ratios. All sorts of things get into contracts these days.

Obviously, the critical question around a constitutional challenge would be the integrity of the instructional unit, and since the integrity of the instructional unit here is vested very clearly in the sections, that has important implications for the collective bargaining structure. I wonder whether you would not in fact, under your proposal, make it almost impossible to guarantee the integrity of the instructional unit.

Mr. Leblanc: I do not believe so, and the reason I say that, perhaps, is from experience, in that OSSTF and l'Association des enseignantes et des enseignants franco-ontariens on many occasions have negotiated together, actually, under one agreement. Under that agreement were French-language schools and English-language schools, and there were articles in the one collective agreement that dealt with the French-language schools and others that dealt with the English-language schools. We were able to accommodate all of that. I think that if you had negotiations through the central board, you could accommodate both the separate school programs and the public programs. I am sure we could do that, because we have done it in the past through one collective agreement.

Mr. Allen: Clearly, the two sections can deal with each other. With regard to the special education example that you used, I think the boards in this region in the past have, in fact, been very co-operative around special education programs in that respect. I would wonder whether that is not manageable under the jurisdictional divisions that exist here, which are not more separate than the present ones that exist between the boards in the region and which they have none the less been able to overcome in the delivery of special education services.

Mr. Leblanc: I believe it can, even in the regular programs, because I think the articles in collective agreements are such that, although it does affect a student in the classroom, we have always been able to accommodate, and I still think we can. Even religion courses, etc., can be accommodated within the one collective agreement dealing with both public and separate. I believe it can be done.

It can certainly help in the question of transfer of teachers from one sector to the other and in a lot of co-operation, a lot more than if you had two different agreements. I look at the bill at times and I ask why we do not have two francophone boards. Would it not be better? We say no, we prefer that it be a united board, but I think more should be given in terms of powers to the united board. But you have a double majority vote question, so a lot of that can be settled through that.

M. le President: Madame St. Amand, Monsieur Ouimet et Monsieur Leblanc, je vous remercie. Thank you very much indeed. We appreciate it.

Our next delegation is from the Ottawa Board of Education. If they would come forward, please, I would be grateful. As we have a new group of people, I again point out that the interpretation receivers are there and that the English is on 7 and the French is on 8. I am sorry that we are running late.

You have about 30 minutes, including questions, if we could. Before you begin, I would be grateful if you would each give your name and affiliation carefully for the benefit of the translation and Hansard.

OTTAWA BOARD OF EDUCATION

Mrs. Loughrey: I am Marjorie Loughrey, the chairperson of the Ottawa Board of Education. To my left is Robert Bélanger, vice-chairperson of the Ottawa Board of Education and chairperson of the French-language education council. To my right is Bob Gillett, director designate, Ottawa Board of Education.

Mr. Chairman: Thank you.

Mrs. Loughrey: Good afternoon. You will be delighted to know that I have allowed time for a short presentation and plenty of time for questions.

The Ottawa Board of Education appreciates this opportunity to respond to Bill 109, the historic legislation which will establish a French-language school board in the Ottawa-Carleton region. The Ottawa Board of Education supports the establishment of the French-language school board. We have been fortunate to have had good relations with our French-speaking colleagues and we take considerable pride in that relationship.

The Ottawa board, as a corporate entity, supports the French-language education council's position outlined in appendix D. I believe it is important for your committee to note that we support strongly their position and, likewise, they support the position taken in our brief.

I would like to make the following points. With regard to the constitutional question, the Ottawa board believes this question must be settled quickly prior to the dissolution of French-language sections from the existing boards. As already stated, we have always had an amicable working relationship with our French colleagues and would be pleased to have that relationship continue if the legislation is not constitutionally verified.

1450

The second point I wish to raise is with regard to facilities: page 74, part XII of the act. We have grave concerns with that part: "Transfer of Buildings and Assets to French-language School Board." The majority-language trustees and the French-language education council of the Ottawa Board of Education reached a fair and equitable transfer of assets. Both parties maintain that our agreement is binding.

We do not believe that subsection 61(7) in any way meets our concern. The Ottawa board takes strong exception to the date of January 1988 as the significant date for the identification of all sites to be transferred to the Ottawa-Carleton French-language school board from the existing boards.

As the ministry is aware from our previous written responses on this matter and from documents included with this brief, appendix E, until July 31, 1988, the Ottawa board leased to the Ottawa Roman Catholic Separate School Board l'Ecole secondaire Belcourt under explicit conditions. It was clearly understood as a precondition to assisting the French-language negotiations that the Ottawa Board of Education, English section, on an interim, nonprejudicial basis, agreed to provide the temporary use of an English facility in a spirit of community co-operation and with a written contractual obligation that the property would be returned vacant on July 31.

This decision was confirmed in negotiations between the majority-language group and the French-language education council and can be seen in appendix F. The recent agreement with regard to the transfer of André Laurendeau to the Ottawa Roman Catholic Separate School Board replaced Belcourt and reaffirms the return of Belcourt to the Ottawa board as of July 31, 1988. It is completely unacceptable that the Belcourt building and site, which were not used prior to the temporary, co-operative, nonprejudicial offer made by the Ottawa board majority-language group, should result in a permanent prejudice in the Ottawa community, as is being contemplated.

The majority-language group of this board has every intention of using it for the majority-language section of this board either for educational purposes within our board or for negotiations with the Ottawa Roman Catholic Separate School Board, English sector. We have provided appropriate wording for the legislation in our letter dated March 24 to Madam Mariette Carrier-Fraser in response to the consultation paper. We regret that there was not time to incorporate this wording in the legislation, or similar wording. The wording appears in appendix A in the brief.

The third point concerns finances: part IX, page 56 of the act. The Ottawa board is on record over and over again to the Ministry of Education that the issue of the pooling or sharing of commercial and industrial assessment cannot be settled exclusively for this new board. We cannot accept the sharing of our commercial and industrial tax base in any other way than through provincial legislation with regard to the financing of public boards in Ontario. Such legislation should be presented after intense consultation with the existing boards and the general public.

The Ottawa board is very concerned that the ministry's current formula does not recognize the needs of inner-city boards for special funding to meet the needs of children in those areas. It is important for you to note that 90 per cent of CityLiving or subsidized housing in the Ottawa-Carleton region is in the city of Ottawa. Bill 109 does not recognize the fact that the ministry has begun a restraint program expected to last five years. Changes in the equalized assessment factors in 1988 are already hampering the services provided by our board. Further limitations to the revenue base of public boards is unacceptable.

My fourth point concerns human resources, part XIII, page 80, "Transfer of Employees to the French-Language Board." We have prepared full documentation of these concerns, section by section, in appendix C. They are technical in nature and must be read carefully. I will touch on one or two of the issues.

On page 82, clause 65(1)(a), the word "exclusively" is too restrictive and should be changed to "greater than 50 per cent" or "majority of duties." One of the major problems with the document is that there is no formula to guarantee a fair share of positions in the French board, and priority is given to meeting only French board needs.

In summary, our concerns are fiscal, facilities and assets and human resources. These concerns must be addressed prior to final wording of the legislation. As well, as noted in our brief, the concerns raised by the French-language education council, particularly the constitutional verification, need to be considered before the final version of the legislation goes before the House.

It is very important to note that in the presentation of the bill by Ministry of Education staff to your committee, Madam Carrier-Fraser did indicate that a number of amendments would be necessary, based on comment received to date. I hope that includes the comment we made. It is my hope that the comments of the Ottawa Board of Education will be given equal consideration when amendments are being written for the bill. Thank you.

Mr. Chairman: Thank you, Mrs. Loughrey. I appreciate that. Are there any questions?

Mr. Beer: Thank you for the brief and the very specific comments, and especially the copies of missives to the ministry. Certainly we will be looking at those as we go through our own clause-by-clause analysis at some point later this month.

I just wanted to ask you with respect to the facilities: You mentioned the specific instance of the one school, Belcourt, and I want to make sure I understand your problem with subsection 61(7). You have an agreement that both you and the FLEC accept. I take it that your concern with subsection 61(7), then, is that what you really want is, in effect, that where such an agreement has been reached, that stand. Is that the essence of it?

Mrs. Loughrey: That is absolutely correct, sir. We are very concerned with the override aspect of the act as it presently is written.

Mr. Beer: I do not want to put words in your mouth—

Mrs. Loughrey: It would be difficult.

Mr. Beer: —but in terms of that particular school, or indeed any other, you are not saying that you are not prepared to consider other interim or transitional proposals, but those would have to be based on an agreement between yourselves and FLEC, or are you also telling us that you do not want to go down any other road with your own facilities?

Mrs. Loughrey: I think you have to be very clear about what has happened. The Belcourt site was leased to the Ottawa Roman Catholic Separate School Board for its use for French-language students. That had nothing whatsoever to do with this act—

Mr. Beer: Right.

1500

Mrs. Loughrey: —as stated, nonprejudicial. The date for identification is prior to the time it will become vacant. In the meantime, of course, there has been a study between the two FLECs of the two Ottawa boards. They came to the conclusion that they needed three schools for French-language students in Ottawa, east of Bronson Avenue. I know that is difficult.

Under that agreement we turned over André Laurendeau. Belcourt has absolutely nothing to do with that agreement. Belcourt is a school for the use of the Ottawa board, English sector. We intend to use it for educational purposes or for negotiations with the Ottawa Roman Catholic Separate School Board, English sector.

Mr. Beer: Thank you.

Mr. Allen: Mr. Beer raised one of the questions I had wanted to raise, and I do not want to pursue the questions further, except to comment that I do hear in the response echoes of some problems that do exist across the province with regard to the relationship of a need for educational space, on the one hand, across the whole system and the reluctance of space-rich boards to see that space in terms other than assets that belong to them for their own local negotiating purposes.

Coming from a community where that issue has been very much in the forefront and where the matter has caused some distress, I only say that I hope the issue for the parents and the French community concerned can be worked out amicably and satisfactorily with an equivalent site of acceptable quality and acceptable space, but that at the same time—and I hope I am not hearing it—there is a tone of reluctance to engage in somewhat more comprehensive settlements that are going to use the capital facilities in this region, as in other parts of the province, in a very equitable and evenhanded kind of way as need arises for all our students in the province and in this region.

Mrs. Loughrey: I can only respond, Mr. Allen, that we have had a very close working relationship with our FLEC colleagues and certainly we would work with them again on any possible solution. I am sure you may ask the question of my colleague Mr. Bélanger, who will be presenting their brief next, but there were long and protracted discussions with regard to the space needs. There was an agreement which was agreed. But certainly we are and have been always open to discussion.

Mr. Allen: The next question I want to go into really is not a question, but you were not here this morning when we cornered the minister. Yes, you were here. I am not sure that all of you were here. But we did press the minister on the question of education finance reform, and you raised the question specifically with regard to commercial-industrial assessments and what was going to develop down the road in that respect provincially.

Clearly, I think the principles that you articulate around the issue are clear and proper. At the same time, the minister did say that he was going to be presenting us all with a document within this coming year, and I hope we will all be able to hold him to that, because the issue has long remained unresolved at the provincial level in a very unsatisfactory fashion for the boards of education across the province.

Mrs. Loughrey: In response to that, we feel very strongly that a board like ours—it is an urban board, an old board, with old buildings. As I cited, 90 per cent of CityLiving or subsidized housing in the region is in the city of Ottawa. That is a different clientele than you have in your urban boards. There has been no recognition of any kind about old facilities or special students, and we have them both.

The other point, of course, we made about the finances is that this must be done on a provincial basis for public boards and not specifically in the Ottawa-Carleton area.

Mr. Allen: Might I just say that I would suspect, if you would agree, that the time is long past when the ministry should radically revise its definitions of acceptable school space use to facilitate many of the concerns which, of course, are very intense in inner-city areas such as, for example, adult day programs for combatting adult literacy issues, employment retraining programs and what have you. These are really so critical to the

economy, as well as to the personnel in our employment sector, in particular at this point in time, not least of all among women who are emerging out of ghettos and into new employment and personal futures.

Mr. Sterling: Just two comments. First, relating to the constitutional issue, I thank you for your response to the consultation paper with regard to the creation of a French-language board in the Ottawa-Carleton area. On the day the bill was introduced, I asked a question somewhat based on your letter relating to the constitutional problem that may be evident in Bill 109. Our party has basically put forward the position that we would like any constitutional mess dealt with before we get into the structure of a board so that we do not have to retract from it.

Second, the only thing I can say about the Belcourt school and that kind of thing is that perhaps the message will get home to the minister that there have been a significant number of changes in the educational structure in Ottawa-Carleton over the last five or six years and that trustees and boards are having a difficult time responding.

I guess this agreement with regard to the Belcourt school only exemplifies the situation in which a board puts itself, in that they make a deal one day and the rules may change the next day. So it makes boards very reluctant to enter into negotiations and make reasonable agreements with other boards as to the useful use of our school space.

I wanted to ask Mr. Bélanger questions with regard to French-language education later.

Mrs. Loughrey: This is just a quick comment. It is certainly true that we have been hit in this province with a number of dramatic changes during the past five years, but we must be very careful not to confuse Bill 30 with Bill 109. There are differences. There are things that interlock in some ways, but they are very different.

Mr. McGuinty: You are with the Ottawa board, are you?

Mrs. Loughrey: With the Ottawa Board. Welcome, Dalton.

Mr. McGuinty: Thank you, Marjorie. Just on a point of clarification, I think my buddy Norm alluded to it. On page 4, you state that the government of Ontario has decided to ignore any potential constitutional or legal challenges to the creation of this board. Just for the record, I do not think that is quite appropriate. Our government does not intend to ignore them. In fact, yesterday before this committee we had a motion to the effect that the Attorney General (Mr. Scott) be summoned, in so far as you can summon the Attorney General, to appear before us for clarification of this matter, so I can assure you that we are cognizant of that and we will pursue it.

Mrs. Loughrey: I am delighted, because this is certainly an issue. The verification of the constitutionality is something that has been raised by more than our brief. We are very anxious, because it would cause chaos—

Mr. McGuinty: Absolutely.

Mrs. Loughrey: —if it were not verified after implementation; whereas if it were verified prior to implementation, then we would avoid great costs and hurt to students, which is what we are about.

1510

Mr. Chairman: Thank you very much, and Mr. Bélanger and Mr. Gillett. We do appreciate it.

Now how do we move—

Mr. Bélanger: I will invite my colleagues up.

Mrs. Loughrey: Yes, we will move.

Mr. Chairman: Very good, if you would, and there is one more thing. I notice that the next brief is in fact appendix D of the one we have just been looking at. Am I right?

Mr. Bélanger: No, it has been circulated as a separate one.

Mr. Chairman: We do have it, Mr. Bélanger, but I was just pointing that fact out. It appears in here as appendix D.

Mr. Bélanger: It could; I have not seen the red one. There is an English version.

Mr. Chairman: For the benefit of the committee, the brief we are about to hear also appears as appendix D in the last one.

Mr. Bélanger: There is an English version behind in the blue one.

CONSEIL DE L'ENSEIGNEMENT EN LANGUE FRANCAISE CONSEIL SCOLAIRE D'OTTAWA

M. Bélanger: Monsieur le Président, je vous remercie de votre invitation. Je voudrais présenter M^{me} Marie-Thérèse Fortier, conseillère scolaire et membre du Conseil de l'enseignement en langue française; M. Yvan Albert, lui aussi conseiller scolaire à Ottawa et membre du Conseil de l'enseignement en langue française; et M. Normand Collette, surintendant aux affaires francophones du Conseil scolaire d'Ottawa. Ces personnes constituent notre groupe pour aujourd'hui.

Je ne voudrais pas m'attarder à lire notre présentation, je vais la commenter. Mais avant de ce faire, je voudrais tout de même dire, et j'insiste là-dessus, que le mouvement vers l'établissement d'un conseil francophone dans la région d'Ottawa-Carleton ne provient pas d'un mécontentement de la part de ceux qui ont été sous la juridiction du Conseil scolaire d'Ottawa. Je veux répéter ce que j'ai eu l'occasion de dire à plusieurs reprises. Les francophones qui ont été sous la juridiction du Conseil scolaire d'Ottawa ont été traités en égaux, et nos jeunes francophones bénéficient aujourd'hui de la même qualité de services, de la même qualité de programmes, de la même qualité d'édifices, de bibliothèques et de laboratoires que leurs concitoyens de langue anglaise. Donc, ce n'est pas que nous soyons insatisfaits de la qualité des services. Il faut tenir compte de ça puisque ça peut expliquer aussi, en partie, une certaine hésitation à faire le plongeon, et je voudrais que vous reteniez cela comme toile de fond pour bien nous comprendre.

Il y a un autre élément aussi qui a changé beaucoup. Quand l'idée d'un conseil qu'on appelait à ce moment-là homogène et d'un conseil unifié francophone pour la région d'Ottawa-Carleton a germé, le contexte dans lequel nous oeuvrions était différent. La Loi 30 n'existait pas; l'ensemble des

enfants à l'élémentaire appartenaient au secteur séparé et l'ensemble des jeunes au niveau secondaire fréquentaient le système public, qui à ce moment-là couvrait l'ensemble mais dans un contexte purement francophone.

Evidemment, la venue de la Loi 30 a changé un peu cette situation-là, et ce qu'elle a comme implication particulière, c'est que nous ne nous retrouvons plus dans le contexte pédagogique dans lequel nous nous retrouvions au début, où il aurait pu avoir beaucoup d'unification possible, et c'est un peu là que nous allons arriver tantôt à la question constitutionnelle.

Un facteur que nos amis anglophones ignorent ou apprécient moins, en général, c'est que dans la communauté francophone il y a quand même, maintenant et depuis quelques années, qu'on veuille le reconnaître ou non - elle est là et elle grossit - une partie de la population francophone, qu'elle soit de nouvelle souche ou même d'ancienne souche, qui est moins attachée, si vous voulez, à l'aspect confessionnelle de l'éducation. Cela, c'est un facteur, c'est une réalité des années 80. C'est une réalité avec laquelle nous allons avoir à vivre au cours des prochaines années.

Evidemment, comme représentants du secteur public francophone, nous voulons assurer que ce droit - qui existe déjà chez les anglophones, où il y a deux secteurs bien établis dans l'éducation: l'éducation confessionnelle et l'éducation au secteur public - que ce droit soit aussi possible au niveau des francophones, que l'on reconnaisse cette réalité, qui fait partie du contexte des années 80. Et ce sont là peut-être deux points dont il faudrait tenir compte un petit peu dans la toile de fond, si vous voulez, des commentaires que j'ai à faire au nom de mes collègues et de l'ensemble du Conseil.

Je voudrais dire que nous continuons à appuyer la mise en place d'un conseil francophone dans la région d'Ottawa-Carleton; cela, c'est notre position de base. Il y aura des difficultés de mise en oeuvre, c'est clair. Il y a des difficultés d'interprétation, il y aura des difficultés, mais le temps aidera. Je pense que nous en arriverons à répondre mieux aux besoins des jeunes francophones de notre milieu. Il ne faut absolument pas retourner à la structure scolaire des années 1968 ou 1965. A cause des nombres, il faut qu'il y ait de la consolidation des francophones, et des idées un peu saugrenues comme celle qu'on avançait qui prônait une division en deux conseils francophones, ça nous serait absolument inacceptable et nous combattrions de toutes nos forces et de toutes nos ressources un tel concepte.

Alors, ce que nous croyons par exemple, c'est qu'il y a des réserves et qu'on doit respecter certains principes. D'abord, on doit garder cette conception globale de l'éducation. On ne doit pas aborder le conseil scolaire francophone avec cette idée de tout séparer et de tout diviser.

Cela m'amène à faire un commentaire sur l'article qui prévoit le partage des responsabilités entre les secteurs. Nous croyons que la façon dont il est conçu est un peu trop rigide. Il ne permet pas une certaine flexibilité qui existe déjà; actuellement, entre le secteur public et le secteur séparé, nous mettons des services en commun ou des programmes en commun. Nous trouvons ces articles un peu rigide.

Nous comprenons bien qu'il y a un aspect constitutionnel, sur lequel nous allons nous-mêmes revenir, qui peut avoir créé certaines limitations. Mais il faudrait au moins qu'il soit possible de mettre en commun des éléments, même dans le domaine purement pédagogique, puisque c'est là que nos jeunes francophones vont bénéficier d'un conseil scolaire.

C'est le petit nombre. Si nous avions de grands nombres tant du côté séparé confessionnel que du côté public, nous n'aurions pas besoin de nous unir et de fournir des services en commun. Mais la nécessité sera là parce que les nombres ne sont pas suffisants, et si nous voulons maintenir une gamme appropriée de programmes, il nous faudra réellement mettre plus en commun. Donc, nous souhaiterions avoir un peu plus de flexibilité dans cette partie de la Loi.

Il faut aussi que le droit de la population francophone au choix entre une éducation confessionnelle et une éducation non confessionnelle soit respecté - d'ailleurs, je pense que le texte de loi proposé le fait en créant ces deux secteurs - et la mise en place de structures qui assureront sans équivoque, du moins si possible, une amélioration ou, au moins, le maintien de la qualité des services déjà en place.

Vous allez dire: «A Ottawa, vous êtes gâtés», et moi, je suis d'accord avec vous. Mais dans notre société, qui change, devons-nous accepter moins parce que nous allons avoir un conseil francophone? Les gens disent: «Eh bien, vous êtes un conseil riche, ça vous coûte cher, vous avez des programmes spéciaux, vous avez des revenus». Mais tant que la loi ne sera pas changée dans l'ensemble de la province, je ne vois pas pourquoi nous autres, les francophones, nous quitterions un conseil où nous sommes bien servis et où, non pas comme conseillers mais comme étudiants, nous avons des services adéquats, des choix, des programmes spéciaux comme une école comme De-La-Salle, avec son programme d'arts spécial, ou des programmes pour ceux qui quittent l'école prématurément ou qui sont en danger de la quitter prématurément, les décrocheurs et ainsi de suite. Pourquoi abandonnerions-nous ça pour avoir moins? Alors, je pense qu'il est essentiel que la législation prévoie ça et que c'est une condition sine qua non que, dans ce changement, on puisse maintenir cette qualité de service. Nous croyons qu'une définition plus précise du financement s'impose.

Nous croyons que le gouvernement s'est bien engagé et, comme je l'ai dit, nous croyons aussi que le gouvernement veut bien s'assurer que la qualité des services sera maintenue pour notre minorité francophone.

Par ailleurs, la réalité constitutionnelle est là. Moi personnellement, je crois que la Loi telle quelle est constitutionnellement correcte, mais je ne suis pas un avocat. Par contre, on a entendu des gens qui mettent en doute sa constitutionnalité. Ces gens-là sont conseillés par des conseillers juridiques qu'on présume compétents, et on ne sait vraiment pas ce que les tribunaux pourraient éventuellement décider. Ce n'est pas que l'on mette en doute la constitutionnalité de cette loi-ci, c'est que d'autres la mettent en doute, d'autres qui sont conseillés par des gens compétents dans le domaine de la loi la mettent en doute. Ils disent qu'ils vont amener la Loi, si jamais elle est approuvée, devant les tribunaux.

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Or, nous disons, et c'est une des recommandations que nous faisons, que nous devrions, à ce moment-là, nous assurer que le projet sera renvoyé aux tribunaux immédiatement après avoir reçu la sanction royale pour un jugement sur sa constitutionnalité et que la Loi ne devrait pas entrer en vigueur avant que le jugement final ne soit rendu.

Nous ne voudrions pas perturber des jeunes, les voir changer de programme, changer de responsabilité. Au niveau des administrateurs et des conseillers scolaires, ce n'est pas bien important; mais au niveau des jeunes,

quand nous sommes en minorité et que nous avons de petits nombres dans des programmes fragiles, il devient crucial que l'on ne les perturbe pas et que l'on ne fasse pas trop de changements répétés, puisqu'à ce moment-là, nos jeunes dans notre milieu, soit qu'ils iront dans des cours d'immersion, soit qu'ils se dirigeront vers un système qui est beaucoup plus stable que celui qu'on pourrait leur offrir. Si on veut maintenir une certaine qualité d'éducation, on ne peut pas soumettre une communauté francophone en minorité, et surtout avec les petits nombres d'élèves que l'on a, on ne peut pas maintenir ce système-là si on les soumet à des changements répétés.

C'est dans cette optique-là que nous voudrions que vous compreniez notre intervention au point de vue de la constitutionnalité de la Loi. Ce n'est pas que nous en doutions. Nous ne sommes pas des avocats. D'autres la remettent en question et la mettent en doute et ils doivent quand même avoir des raisons assez valables.

Donc, nous recommandons, Monsieur le Président, comme je viens de le dire, que pour 1988, l'on procède à l'élection de membres de la section de langue française au sein des conseils existants, les CELF, conformément aux dispositions prévues dans la Loi 75; que pour la Loi 75, on laisse les choses en place; que l'on ait une référence constitutionnelle, que l'on ait un jugement de la Cour; après quoi, que l'on mette la Loi en place.

Je voudrais revenir sur la définition de <francophone>. La définition contenue dans le texte de la Loi, à notre avis, n'est pas complète. Il ne s'agit pas de changer l'article 23, il s'agit de reconnaître que la Loi élimine certaines gens. Il y a de nouveaux arrivés, de nouveaux Canadiens de souche française qui parlent et continuent à parler français, qui désirent s'associer à la communauté francophone et qui, tel que décrit dans la Loi, pour moi, seraient exclus.

Il y a les autres aussi, qui arrivent au Canada et qui ne sont ni francophones ni anglophones et qui ont un choix à faire. On rencontre beaucoup de ces gens-là dans la communauté portugaise, par exemple, qui penchent souvent vers notre milieu, le milieu francophone. Donc, il ne faudrait pas les éliminer.

Tantôt, Mme O'Neill a fait un commentaire et, quoique le commentaire soit valable, je crois que nous ne demandons pas de changer l'article 23. Ce que nous demandons, c'est de changer cet amendement à la Loi sur l'éducation, puis le projet de loi 109, pour prévoir que, en vertu du projet de loi 109, l'interprétation de <francophone> sera telle qu'elle est déjà, et plus: elle comprendra les deux autres groupes que je viens de mentionner. C'est en ce sens que nous suggérons que la définition soit modifiée, et dans la Loi sur l'éducation et dans le projet de loi 109, afin d'y inclure les catégories de personnes que j'ai mentionnées et qui sont mentionnées dans notre présentation.

La constitutionnalité: j'y ai touché tantôt.

Le financement: Nous savons que le ministre nous a dit: <Oui, vous aurez du financement>, mais nous voudrions que le ministre aille plus loin. Nous voudrions que ce soit garanti dans la Loi par un amendement à la partie IX, au paragraphe 48(3), qui dit actuellement: <Le lieutenant-gouverneur en conseil peut prévoir le paiement à la section publique ou à la section catholique, ou aux deux, des subventions spéciales>. Ce sont les mots <peut prévoir> que nous trouvons très faibles. Alors, nous voudrions voir une garantie dans la Loi que jusqu'à ce que l'ensemble du financement du système d'éducation en Ontario soit remanié, entre-temps et jusqu'à ce point-là, nous serons assurés des

revenus que nous avons eus jusqu'à maintenant pour tenir compte des notions suivantes: de reconnaître la nécessité des subventions spéciales de départ; les besoins nouveaux du conseil en matière, par exemple, de l'établissement d'un édifice administratif, de la mise en commun des services administratifs; de permettre à chaque section du conseil plénier d'offrir des services équivalents à ceux qui sont disponibles aux élèves anglophones, comme je viens de le mentionner, en particulier pour ceux d'Ottawa, que nous représentons; de ne provoquer aucune diminution des services et programmes offerts aux francophones; de tenir compte des dépenses additionnelles entraînées par la structure des deux sections; et de reconnaître la part actuelle des revenus générés pas les taxes commerciales et industrielles.

Nous croyons que le gouvernement doit s'engager, dans la Loi, à nous garantir les points susmentionnés, et non pas uniquement par une déclaration ministérielle, que nous trouvons trop faible.

Le transfert des biens: Nous avons conclu à l'amiable, avec nos collègues de langue anglaise, après beaucoup de discussions, une entente que nous considérons comme valable. Nous sommes des adultes, nous sommes des gens responsables, nous sommes mêlés au monde de l'éducation depuis bon nombre d'années. Nous croyons que nous sommes compétents et que nous avons négocié avec eux une entente valable. Nous trouverions totalement inacceptable que, tel que la Loi le prévoit pour le moment à l'article 61, un conseil qui entre en fonction le 1^{er} décembre puisse remettre tout en question.

Nous croyons que l'entente que nous avons négociée avec nos collègues est une entente de transfert de biens dans leur ensemble qui est équitable pour les francophones. Nous voudrions que cette entente-là soit respectée et qu'elle ne soit pas remise en question, et c'est pour cela que l'article 61, à notre avis, devrait être révisé. Nous recommandons ensuite que les paragraphes 62(9) et (3) soient abrogés et que la Loi soit modifiée de telle sorte qu'elle reconnaisse les ententes déjà conclues. Ce sont des ententes qui ont été faites de bonne foi et entre les élus qui sont responsables.

Monsieur le Président, je sais que vous allez avoir des questions. J'ai passé rapidement; j'ai parlé vite puisque le temps presse. Je voudrais réitérer le fait que, dans l'ensemble, nous, du Conseil scolaire d'Ottawa, si on tient compte des suggestions que nous avons faites, si la constitutionnalité du projet de loi est bien établie et si le financement est assuré et garanti dans la Loi, compte tenu aussi d'une ouverture d'esprit en ce qui a trait à la définition de «francophone», nous continuons à appuyer l'intention du projet de loi. Les exigences constitutionnelles et le financement sont quand même des points extrêmement majeurs et extrêmement importants, à notre point de vue.

M. le Président: Monsieur Bélanger, je vous remercie et je suggère que les six pages de ce mémoire soient inscrites au compte rendu du Comité, si possible.

M. Beer: Merci pour votre présentation. Il m'est intéressant de voir depuis 20 ans, depuis la législation de M. Bériault, qu'en effet, vous, du Conseil scolaire d'Ottawa, avec la communauté francophone, avec les différentes sortes de comités mis sur pied durant cette période, vous avez vraiment créé quelque chose d'important et de valable entre anglophones et francophones, et je pense qu'il faut le souligner en ce moment qui voit la naissance d'un nouvel ordre.

Ma question porte directement sur l'aspect qui a déjà été soulevé ce matin et hier par les membres francophones du conseil public de Carleton. Là, si j'ai bien compris, on craint, en ce qui a trait à ces changements, que les francophones qui voudraient envoyer leurs enfants aux écoles publiques perdent quelque chose, peut-être. Il est clair dans votre présentation que vous ne partagez pas ces opinions, et je me demande si vous pourriez clarifier un peu vos considérations, puisque, si j'ai bien compris, vous, comme les francophones de Carleton, vous pensez que, à l'intérieur du Conseil jusqu'ici, vous avez des relations étroites avec vos collègues anglophones et, bien que vous n'ayez peut-être pas reçu tout ce que vous vouliez, en général, ce sont de bonnes relations.

Avez-vous discuté de cette question avec vos collègues francophones des écoles publiques de Carleton et pouvez-vous peut-être nous dire pourquoi vous pensez que maintenant vous pouvez former une autre sorte d'association avec les francophones catholiques sous l'égide de ce nouveau conseil?

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M. Bélanger: Je pense que la distinction entre la position du CELF de Carleton et le nôtre est plutôt minime. Eux disent, et nous l'avons dit aussi, qu'ils trouvent que la Loi ne garantit pas un financement égal à ce qu'il est actuellement pour les francophones. Nous avons pris la même position. Eux disent: <Ne faisons pas de changement tant que le gouvernement ne fera pas de changements globaux dans l'ensemble du financement du système d'éducation en Ontario>.

Notre position est plus mitigée. Notre position dit: <Non, nous sommes prêts à accepter, pourvu que les garanties de financement soient incluses dans la Loi et que ce financement égale ce que nous recevons pour le moment> - sachant que nous sommes très riches et que nous vivons bien; ou, si vous le voulez, que nos écoles sont bien menées, que nous avons une variété de programmes. Ce qu'on nous reproche toujours, c'est le fait que nous avons le coût le plus élevé par élève, mais nous ne voulons pas priver nos élèves francophones de cet avantage-là.

Alors, ce que nous vous disons, et la distinction, c'est que nous disons: <Garantisiez-nous que vous allez nous offrir, jusqu'à une refonte générale du financement, ces mêmes moyens financiers-là>. Si c'est là, nous dirons: <Bon>. S'il y a toujours un peu moins de flexibilité, être financé par voie de contribution, quand on se finance soi-même localement. Mais enfin, nous sommes prêts à accepter l'inconvénient pour pouvoir voir le projet aller de l'avant.

L'autre aspect, c'est l'aspect constitutionnel, évidemment, et je pense que là-dessus nous deux partageons le même point de vue; je viens de l'expliquer. Nous disons que nous aimerions bien avoir une décision de la Cour avant que le projet soit mis en oeuvre, compte tenu de la situation qui se présente dans la province, mais je pense que c'est la seule distinction.

M. Beer: D'accord. Vous pensez donc que, à l'avenir, le secteur public pourrait s'épanouir avec le secteur catholique?

M. Bélanger: D'abord, les deux secteurs demeureront quasi indépendants. Dans la vie, il y a des risques à prendre. Il y a des risques qui sont moins intelligents et des risques qui sont plus intelligents. Il y a évidemment un risque dans tout ce projet; il y en a, je pense, pour tout le monde, tout ceux qui s'embarquent. Nous croyons quand même que le risque est

intelligent et vaut la peine, compte tenu de l'enjeu, et étant donné aussi que, au fil des ans, il sera probablement possible, quand les esprits se seront calmés, quand l'habitude de travailler ensemble sera faite, de mettre un peu plus en commun sur le niveau de la pédagogie pour s'assurer que nos francophones ne seront pas privés de programmes essentiels.

C'est peut-être dans ce sens-là que nous demeurons quand même optimistes: nous croyons que le projet peut être un succès à long terme. Il ne faudrait pas s'attendre que, au lendemain de son adoption ou de son entrée en vigueur, ce soit la lune de miel absolue. Il faut être réaliste: ça va prendre du temps, ça va prendre des années; les gens vont changer, l'habitude de travailler ensemble se fera. Mais ce sera, je pense, à l'avantage des francophones de la région que de s'unifier dans un conseil de ce genre, tout en respectant les droits acquis en vertu de la constitution.

M. Beer: Merci beaucoup.

M. Allen: Merci beaucoup pour votre mémoire, mesdames et messieurs du CELF du Conseil scolaire d'Ottawa. Je ne comprends pas clairement votre discussion du financement et des provisions. Par exemple, vous avez dit: «à moins que des garanties précises de financement égal à celui reçu jusqu'à présent soient incluses dans la législation». Cela veut dire quoi, au juste? Egal au niveau de financement du Conseil scolaire d'Ottawa à l'égard de ses élèves, à celui du Conseil scolaire de Carleton, à celui du conseil des écoles séparées ou à la moyenne? J'ai posé une question à ce sujet au ministre de l'Éducation (M. Ward) ce matin et il n'a pas donné de réponse. Qu'est-ce que la question précise?

M. Bélanger: Si vous allez au paragraphe 48(3), nous voudrions que ce paragraphe-là soit changé. Il se lit comme suit: «Le lieutenant-gouverneur en conseil peut prévoir le paiement», «may provide for the payment to the public sector», et c'est en vertu de ce paragraphe-là que le ministre dit: «Nous allons assurer un financement égal à ce que vous avez eu». Ce que nous voulons, c'est que ce paragraphe-là soit changé pour dire: «Le lieutenant-gouverneur en conseil garantit» - et cela s'applique tant, remarquez-le bien, au secteur public qu'au secteur séparé - «garantit à la section publique et à la section catholique des subventions spéciales et temporaires pour assurer le maintien des programmes et des services existants». C'est dans ce sens-là que le paragraphe 48(3) doit être changé et c'est le point que nous soulignons. Actuellement, la Loi elle-même ne garantit absolument rien à ce sujet.

M. Allen: Est-il possible, avec une telle formule, que les services dans les deux sections du conseil, ceux qui sont offerts aux élèves de la section publique et ceux qui sont offerts aux élèves de la section séparée, soient différents?

M. Bélanger: C'est possible.

M. Allen: C'est possible?

M. Bélanger: C'est possible pour commencer puisque nous partons, nous, comme vous le savez tous, avec des coûts par élève qui sont beaucoup plus élevés; nous avons des programmes aussi qui sont beaucoup plus dispendieux. Il est facile de se référer à un «per capita», mais il faut aussi voir les coûts de certains programmes. Le programme pour les décrocheurs ou des programmes comme ceux que nous avons à De-La-Salle, ou d'autres programmes que nous avons, sont des programmes dispendieux. Le coût d'opération, le coût

de maintien, d'entretien et tout ça, pour le secteur français du Conseil scolaire d'Ottawa, est de l'ordre de 25 millions de dollars par année, pour le moment.

Alors, ce que nous voulons dans le fond, disons-nous, c'est que nous voudrions que ces revenus-là soient assurés, non pas par une promesse ministérielle... c'est bon, je fais bien confiance au ministre, mais enfin, on préférerait de beaucoup, et c'est même pour nous une condition, le voir dans la Loi de telle sorte que nous en serions assurés, sachant très bien que le revenu viendra évidemment, comme toujours, de trois sources: de taxes résidentielles, en partie de taxes commerciales et en partie, évidemment, de subventions du ministère.

M. Allen: A l'égard de la définition de <francophone>, je me souviens que lors des débats sur le projet de loi 75, il y a eu des hésitations à développer une définition différente de celle de l'article 23 de la Charte des droits et libertés à l'égard des droits linguistiques en matière d'éducation. Maintenant, vous êtes évidemment heureux de la possibilité d'inclure le grand groupe de citoyens dans le recensement pour fins d'impôts, etc., et pour la gestion de votre conseil francophone à Ottawa-Carleton. Avez-vous une définition des mots exacts pour nous qui satisfait cette intention?

M. Bélanger: Nous pourrions en faire parvenir une copie au Comité puisque nous en avons élaboré un texte, et il sera toujours possible de le faire.

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M. Allen: Merci beaucoup.

M. le Président: Ce serait très intéressant. Merci beaucoup.

Mr. Sterling: Thank you for the definition. It is the same kind of problem that I have, and if we are going to go to a larger definition of francophone students or a francophone ratepayer, then we have got to have some definite direction as to which way we go. It is nice to talk about it in general terms, but when you get down to the nitty-gritty and we go through the bill clause by clause, if we are to propose an amendment which will have credibility, then it has got to be a credible amendment as well.

I guess the problem that I come down to, and I think it is a large part in terms of supporting this piece of legislation in its final form, comes to a problem of what you really want in the final analysis with respect to these financial guarantees regarding the quality of programs and the financing of them. It is difficult for me, as a legislator, to know how, in the final analysis, to set that up in a proper perspective. Knowing what the tendency of governments might be in this regard, and if in fact they are unwilling to put it in a legislative context, then what is your advice to me with regard to the support of this particular piece of legislation? I mean, I have got to decide that, and you are part of my constituency as such. Therefore, I would like to know what your advice is if in fact the minister will not accept a guarantee in legislation in terms of financing and equality of programs that you are now receiving under the present situation.

M. Bélanger: Je pense que nous serions obligés de dire que ce n'est pas acceptable puisque ce n'est pas au niveau des administrateurs que ça nous inquiète, c'est au niveau de la communauté francophone. Nous avons pu, dans la

structure qui existe aujourd'hui, donner à des jeunes francophones une variété de programmes dont jouissent les jeunes anglophones, une variété de services de qualité; et si nous préconisons des changements de structure pour satisfaire certains besoins de gouvernance, de gestion, il est plus important de s'assurer auparavant que les jeunes, au point de vue de l'éducation, auront ce qu'il y a de mieux.

Ceux qui, comme moi, ont connu les années avant 1970, quand nous, en Ontario, vivions dans un système de régimes d'écoles privées, savent combien nous avons souffert et que si nous avons fait le pas, qui a été un pas immense à ce moment-là, de passer au système public, c'était parce qu'il existait la nécessité d'aider les jeunes francophones à obtenir une meilleure éducation et à avoir accès, dans des familles qui étaient des fois économiquement faibles, à une éducation supérieure.

Alors, c'est le principe. Donc, si le financement n'est pas garanti d'une façon satisfaisante dans la Loi, de telle sorte que nous pouvons maintenir ces services-là, je ne vois pas pourquoi la communauté francophone accepterait de changer de structure et de système.

Au point de départ, je reviens sur la note que je disais en préface. C'est que les francophones du Conseil scolaire d'Ottawa sont très bien traités, ils ont des services adéquats, des services de qualité et des services exceptionnels. Donc, en changeant, il ne faudrait pas punir les francophones pour qu'ils en aient moins. Il faudrait leur garantir un financement qu'ils vont pouvoir maintenir. Avec le temps, la nature change et la façon d'offrir ces programmes-là change; mais au point de départ, nous devons nous assurer de pouvoir les continuer, ces programmes-là. Sans cela, ça devient inacceptable.

Mr. Sterling: So your advice to me is not to vote for this piece of legislation unless those guarantees are there.

Mr. Bélanger: Well, I think yes, that is definitely my advice, Mr. Sterling.

Mr. Sterling: Thank you.

Mr. Beer: Just because what Mr. Sterling is asking you is an important point and I want to be very clear on this, when you are saying you want that guaranteed, must it be guaranteed in the legislation or is there some other kind of guarantee? That has come up before and I wanted to clear it up.

Mr. Bélanger: That is exactly what we are saying. We want to see it in the legislation, Mr. Beer. I do not think that to have it otherwise, as you know—and you have been, I am sure, close to the government's operation longer than I have, in another jurisdiction. All sorts of events occur, governments have to constrain expenses and so on and we cannot take that risk. We will be prepared to live with whatever new law and method of financing comes in the province and is instituted eventually. But in the meantime, we surely do not want to find ourselves back to 1967 or 1968. That is totally unacceptable.

M. le Président: Madame Fortier, Monsieur Albert, Monsieur Collette et Monsieur Bélanger, nous vous remercions beaucoup.

Notre prochaine délégation est le Comité de planification de l'enseignement en langue française d'Ottawa-Carleton.

Gentlemen, if you could repeat your names and affiliations, we would be grateful.

COMITE DE PLANIFICATION DE L'ENSEIGNEMENT EN LANGUE FRANCAISE
D'OTTAWA-CARLETON

M. Comtois: Je suis Jean Comtois, président du Comité de planification pour le Conseil scolaire d'Ottawa-Carleton, et également du comité d'incidence. A ma gauche est Maurice Lapointe, qui en est le directeur général.

Nous vous remercions de l'occasion de vous faire part de nos commentaires. Je débute en faisant la remarque que vous avez pu, au cours des deux dernières journées, vous apercevoir qu'en ce concerne la planification au niveau de tous les conseils scolaires francophones, il n'a pas été possible d'obtenir un consensus général. Il reste que, par rapport à un tas de questions, par rapport à un certain nombre de points, nous nous rejoignons et nous différons quelque peu sur d'autres. Il est déplorable que le consensus général ne soit pas là actuellement, mais vous devez comprendre aussi que, étant donné le sérieux de la question et l'importance de ce qu'on essaie de faire, un consensus semblable, ça prend quand même un bout de temps avant de l'obtenir.

Ce que je vous présente aujourd'hui - je suis à la page trois de notre mémoire - ce sont les positions présentées à une réunion du Comité le 5 mai 1988. Nous avons déposé là un document, et vous avez en annexe d'autres documents que nous avons également disposés, vous les y trouverez. Nous nous sommes tombés d'accord, à cette réunion, que le document en question soit présenté aux conseils de l'enseignement en langue française des différents conseils et qu'à partir de là, le président de chaque CELF nous rendrait compte de la décision du CELF quant à son appui ou à son désaccord vis-à-vis de ce que nous vous présentons aujourd'hui. Hier, vous vous êtes rendu compte qu'un groupe de conseillers scolaires francophones du CELF de un des conseils s'est désisté et, par conséquent, n'est pas d'accord avec ce que je vous présente actuellement.

En général, le Comité appuie le projet de loi 109 dans sa conception d'une façon globale. Il le considère comme un geste historique qui accorde aux francophones la gestion de leurs institutions scolaires locales. Le mode de structure qu'il suggère répond aux attentes de la communauté francophone de la région.

Le présent mémoire ne s'attarde pas à commenter chaque clause, et je vais essayer, si vous le voulez, d'éviter les répétitions puisque vous avez déjà entendu un certain nombre de commentaires sur bon nombre des articles du projet de loi. Alors, je vais essayer d'éviter les répétitions, mais je vais m'assurer quand même de vous souligner ce que, comme comité de planification, nous recommandons pour améliorer le projet de loi, pour faire en sorte que, d'une part, il soit constitutionnel et, d'autre part, il réponde d'une façon adéquate aux attentes des francophones.

Je passe donc à la première partie du projet de loi, qui concerne la définition de ce que c'est qu'un francophone. D'après nous, il faut absolument que la définition qui apparaît dans le projet de loi soit changée et que les lois en question, la Loi sur l'éducation et le projet de loi 109, soient amendées afin que l'on puisse inclure dans la définition de <francophone>, en plus de toute personne tombant sous l'article 23 de la Charte canadienne des droits et libertés, toute autre personne dont la première langue officielle du

Canada est le français; de telle sorte que, par exemple, si un immigré français venant de France arrive au Canada, il puisse s'identifier comme francophone. Actuellement, ça pose un problème. L'immigré qui n'a pas d'enfant et qui nous arrive et qui parle le français d'abord, ne pourrait pas s'identifier comme francophone, selon la définition actuelle. Il faut absolument que le tout soit corrigé.

Quant à la partie I, notre commentaire a trait à la constitutionnalité. Nous sommes d'avis que le projet de loi est constitutionnel, que ce qu'il essaie de faire est constitutionnel. Cependant, nous vous suggérons une amélioration pour faire en sorte que cette perception soit plus claire. Nous proposons donc que les paragraphes 3(3) et (4), qui se lisent actuellement comme suit: <La section publique-catholique gère, pour le conseil de langue française> soient amendés pour faire en sorte qu'ils se lisent de la façon suivante: <La section publique-catholique est le conseil de langue française lorsqu'elle gère les écoles et les classes> dans chacune des sections. Je pense qu'il y a une modification, mais elle est importante. Donc, quand les sections gèrent, elles seront le conseil.

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A la partie II, nous reconnaissons l'importance des compétences exclusives pour faire en sorte que le projet de loi maintienne sa constitutionnalité; nous la reconnaissons et nous l'appuyons. Mais nous reconnaissons également que les deux secteurs veulent coopérer et faire en sorte qu'on puisse mieux répondre aux besoins des enfants qui relèveront de ce conseil scolaire-là, puisqu'en fin de compte, le conseil scolaire est là pour répondre aux besoins des élèves qui relèveront du conseil scolaire en question.

Par conséquent, nous suggérons, en bas de la page sept de notre mémoire, que les dispositions 4(1)4, 4(1)5 et 4(1)17 soient reportées après la disposition 4(1)18 et que les dispositions soient renumérotées en conséquence. Si c'était fait, on pourrait faire en sorte que ces dispositions-là puissent possiblement, si les conseillers scolaires le désirent, devenir non seulement des compétences exclusives mais également des compétences communes.

Par exemple, la disposition 4(1)4 prévoit que non seulement le choix du matériel pédagogique et d'apprentissage est censé être une question irrévocablement exclusive mais aussi son approvisionnement. Mais en ce qui a trait à son approvisionnement, qu'il soit fait par le conseil ou par la section, ce qui est important, c'est que ce qu'on va acheter, ce qu'on va mettre à la disposition des élèves puisse répondre à leurs besoins, en respectant la constitutionnalité. Le fait de l'acheter, que ce soit acheté par le conseil ou par les sections, ça a peu d'importance.

A la partie IV, le paragraphe 17(2) semble se rapporter beaucoup plus au droit de propriété conjoint qu'au droit partagé. Et là, il y a un problème important qui se glisse là-dedans. Par exemple, si une résidence appartient aux deux conjoints, donc à l'épouse et à l'époux, et qu'un de ces conjoints soit de langue anglaise, il appert dans la Loi, telle qu'elle est proposée, que le contribuable devient un contribuable anglophone. Il faudrait absolument corriger ça pour faire en sorte que ces gens-là aient la possibilité de s'identifier comme contribuables francophones. Nous proposons donc que des mesures soient prises pour amender les lois existantes afin de permettre aux personnes possédant ou louant conjointement des propriétés, de diviser leurs taxes scolaires, et qu'entre-temps, l'explication en marge du paragraphe 17(2) stipule bien que ce paragraphe s'adresse aux propriétés possédées conjointement et non aux propriétés multiples.

A la partie VIII, je m'adresse ici à la disposition 35(6)3. Etant donné la distribution de la population francophone dans la région, quand arrivera le temps d'établir les zones scolaires dans le but d'élire les conseillers scolaires, il faudra prendre en considération le fait que dans certains secteurs d'Ottawa-Carleton, le nombre de francophones est très petit. Par conséquent, il faudra ouvrir les frontières, et ce que nous vous proposons est dans le but de permettre ça. Nous vous proposons, par conséquent, que la disposition 35(6)3 soit amendée afin de permettre le regroupement de municipalités ou de zones d'une municipalité avec un ou plusieurs quartiers d'une municipalité avoisinante pour ouvrir ce potentiel-là de les regrouper, ce qui répondrait plus adéquatement à la représentation des conseillers scolaires.

La partie IX: Nous parlons évidemment de toute la question du financement, question qui est cruciale. Vous en avez entendu parler par chacun des conseils scolaires. Nous devons réitérer le fait que le Comité de planification appuie ce qui est proposé par le projet de loi 109, à condition que le financement qui sera donné au conseil scolaire puisse permettre à ce conseil d'offrir aux élèves ce qui sera adéquat et ce qui sera comparable à ce qui est offert aux autres élèves d'Ottawa-Carleton. Il nous semble que ce qui est cité dans le projet de loi, tel qu'il apparaît actuellement, n'est pas suffisant.

Nous vous suggérons donc, à la page 11 de notre mémoire, que le paragraphe 48(3) soit amendé afin de se lire comme suit: <Le lieutenant-gouverneur en conseil doit prévoir le paiement à la section publique ou à la section catholique, ou aux deux, des subventions spéciales et temporaires nécessaires pour que les élèves francophones puissent recevoir des services équivalents à ceux offerts aux élèves anglophones>. Nous suggérons également qu'un alinéa y soit ajouté afin de garantir que ces mesures demeureront en vigueur jusqu'à ce qu'une réforme du financement scolaire vienne offrir cette égalité. A notre sens, il est essentiel que ce soit fait et que ce soit dans le projet de loi. Pour savoir quelle serait la formule qui permettrait d'accomplir cette tâche, il reviendrait évidemment aux fonctionnaires d'en arriver à une formule qui pourrait faire en sorte qu'on puisse fournir ce genre de financement.

A la partie XII du projet de loi, aux paragraphes 61(9) et (3), le Comité est d'accord avec l'approche générale que spécifie le transfert des institutions scolaires. Vous savez qu'on a déjà fait beaucoup de travail dans le Comité. Vous avez en annexe un document présenté et adopté par le Comité de planification là-dessus. Il est important de se rendre compte qu'à ce niveau-là, des négociations ont déjà débuté.

Si le projet de loi veut nommer des facteurs, et c'est ce qui arrive, pour ce qui est du transfert de l'édifice lui-même, il ne semble pas y avoir trop de problèmes, comme on vous l'a dit il y a peu de temps. Le problème commence à se poser lorsqu'on considère autre chose, et dans le projet de loi tel qu'il est écrit, le paragraphe 61(3) pose un problème assez important puisqu'il n'énumère pas tous les facteurs; il n'énumère qu'un facteur.

Donc, nous suggérons que le paragraphe 61(3) du projet de loi soit amendé de la façon suivante: <Sous réserve du paragraphe (2) et sujet aux ententes passées entre les conseils actuels>, ce qui fait que s'il y a une entente entre le moment du transfert, etc., on peut prendre en considération le fait que cette entente-là est également valable. Nous suggérons aussi que le paragraphe 62(3) soit abrogé complètement puisque ça n'a pas de sens, on ne fait pas une liste complète des facteurs à considérer quand on parle du

transfert de <other assets>. Alors, soit qu'on ajoute les autres facteurs, soit qu'on les enlève complètement.

Au paragraphe 66(1), le Comité est d'avis qu'il doive y avoir des ententes entre les conseils actuels et le conseil de langue française au sujet du nombre d'employés transférés de chaque conseil. Sur ça, il ne semble pas y avoir de problème; ceux qui sont dans les institutions francophones vont être transférés, etc. Par ailleurs, quand on sort de ces institutions, quand on parle d'employés qui sont au niveau de la responsabilité centrale du conseil, le Comité estime qu'à ce moment-là, le nombre d'employés dont le conseil de langue française aura besoin doit être déterminé par ce dernier uniquement. Si on a besoin de concierges, si on a besoin de surintendants, etc., il revient au conseil scolaire francophone d'identifier ses besoins.

Alors, nous proposons que le paragraphe 66(1) soit reformulé pour reconnaître le droit et l'obligation du conseil de langue française, en matière de transfert d'employés, de déterminer le nombre de ces employés et pour spécifier la nécessité d'une entente sur les autres points.

D'une façon générale, donc, nous appuyons le projet de loi. Nous faisons certaines recommandations ici pour, si vous le voulez, parfaire ce qui est déjà là, et nous sommes d'avis que le projet de loi doive aller de l'avant. Nous reconnaissons le problème de sa constitutionnalité, et il revient au gouvernement de décider s'il veut le présenter pour faire en sorte qu'il y ait un jugement là-dessus. Mais les conversations et les consultations que nous avons eues sont sûrement des indications que le projet de loi, tel qu'il est fait, est constitutionnel. Je vous remercie.

M. le Président: Merci, Monsieur Comtois. C'était très bien fait et je suggère que ce mémoire soit inscrit au compte rendu du Comité, avec l'annexe A.

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Mrs. O'Neill: If I may ask you, Mr. Comtois, to go to folio 8, part 4, of your presentation, that has been presented to us by many groups and is of concern to the committee. You have stated in the paragraph immediately preceding your recommendation that there are cases where a minority group is dealt with in such a manner. Could you give us some examples? We have not to this point, as I know, been able to split school support between public and separate except in the corporate area.

Mr. Comtois: I think the point we are making here is the fact that legislation exists right now for the purpose of property on the basis of, for instance, religion. If somebody is not identified as a Catholic or does not identify himself or herself for the purpose of support, that person is automatically identified as a public school supporter.

What this proposes is to do the same thing on the basis of languages. If somebody does not identify himself or herself as a francophone, that person then is not identified as a francophone. Where you have two parents owning a property, one English, one French, then it is even worse, because in that particular case, the taxes in support of the system will automatically go to the English-language school board, if you wish, of Ottawa-Carleton.

From that perspective, we are saying this should be corrected in order to allow the possibility of allocating part or, if both agree, all of those taxes to the francophone school board.

Mrs. O'Neill: Do you have some specific manner in which you can see that section of the bill being amended to take into consideration your goal, which I think is a concern of more people than yourselves, and certainly some of us?

Mr. Lapointe: I think one of the ways of doing it is to allow people to split their taxes when they jointly own property, because there are many cases, and we feel that if one is right now in a joint ownership and there is no unanimity on being public or separate, it goes to the public. Now we have introduced in this Bill 109 that if there is no unanimity on language lines, it is automatically anglophone, either on the separate side if there is unanimity on the confessional side, or through the public side if the two agree that it should be public. But it goes automatically to the anglophone.

It adds to the first definition of a francophone under article 23 that you have to qualify. You have instances in which, here and there, we mention that if you do not qualify, if you do not have unanimity, you are deemed to be an anglophone. This is what we are trying to correct.

Mr. Comtois: Paragraph 17(2)5, as it is stated in Bill 109, is very specific: "If at least one of them chooses to support an English-language board they shall be supporters of the English-language board." But we could also say, "If at least one of them chooses to support a French-language board or sector they shall be supporters of the French-language sector or board."

What we are saying here is, why not provide that kind of possibility for the purpose of identification? Why do we force them, in those cases, automatically to become supporters of an English-language board? Why not allow those contributors to identify themselves and become supporters?

Mrs. O'Neill: So when you were talking about a precedent here, you were talking about a precedent that does not carry forth your goals but is a goal that is a hindrance.

Mr. Comtois: That is right, and it is one way.

Mr. Beer: My question deals with something I do not think you have touched on, and that relates to the dispute mechanism that is proposed. We have heard from the Ottawa separate school board and the Carleton separate school board some concerns about the way in which the Languages of Instruction Commission of Ontario would proceed to deal with disputes. I just wondered if you had thought of changes or proposals for that but in the end had felt it was best to leave it the way it was, or whether you do have some views.

If I recall correctly, it seemed to me the two essential points were concern over who would be looking, who the arbitrators would be, in effect, specifically what their function would be and the time frame they would have, given that the languages of instruction commission was originally set up for a specific purpose and, while this is not totally unrelated, none the less it is a different procedure. I just wonder, based on all that you have seen and heard over the last number of months, if there are some suggestions you would have for us in that area.

Mr. Comtois: As chairperson of the committee, I do not have any very specific suggestion on this. The only thing I can raise here is that this topic was discussed at the committee level and some reservations were expressed regarding enlarging the powers of the languages of instruction commission to perform the duties as it is established in that part of the

legislation. But I do not think it has gone much further than that to the point where I could, as a president, right now suggest to you some modification to the process.

Mr. Beer: In effect, these changes that you put forward—just to clarify my own mind—are ones that the group, the committee, has proposed?

Mr. Comtois: That is right.

M. Allen: Je suis heureux d'avoir votre mémoire ainsi que vos commentaires sur le projet de loi 109.

Premièrement, à l'égard du transfert des enseignants et des employés, je lis dans les notes explicatives au début du projet de loi, la phrase suivante: <Le projet de loi prévoit également qu'aucun employé ne perdra son emploi parce que son poste est éliminé au cours de ces trois années par suite de la formation du conseil de langue française>. Etes-vous satisfaits des garanties d'emploi prévues dans le projet de loi? Si ma mémoire est bonne, les garanties dans le projet de loi 30 étaient plus importantes que celles-ci.

M. Lapointe: Toutes les discussions que nous avons eues avec les conseils scolaires et avec les associations d'enseignants et les associations d'employés ont été pas mal intensives. Vous avez, d'ailleurs, une copie du travail qui a été fait sur cet aspect-là. Nous avons tenu compte de leurs suggestions.

Je pense que c'est quand même un signe positif que, ce matin, l'association des enseignants, qui est venue vous présenter un mémoire, n'avait aucune considération sur le transfert des employés puisqu'il y avait eu beaucoup de dialogues entre les associations d'employés, y compris enseignants et non enseignants, et ces associations n'ont proposé aucun changement à la dernière version de ce mémoire-là, qui a été approuvée le 5 mai.

Je dois dire aussi, en réponse à votre question, Monsieur Allen, qu'il y avait dans ce travail-là un sens de justice envers ces personnes-là, et si, pour assurer un sens de justice, il fallait dire qu'il y aurait un genre de <open window> pour trois ans, je pense qu'il faudrait l'y mettre. Il faut non seulement que dans un premier temps, un premier mois, les employés soient traités justement, mais aussi que dans la période d'adaptation, ces personnes-là puissent, selon certaines conditions — qu'il y ait un emploi vacant et le reste, et toutes ces conditions sont spécifiées dans le document — ces gens-là sentent qu'ils n'ont pas été mis sous pression pour prendre une décision très rapide et irrévocable et que, après avoir réfléchi, ils s'aperçoivent qu'il y avait des éléments dont ils n'avaient pas tenu compte.

M. Allen: N'est-il pas nécessaire d'avoir des provisions pour le recyclage, la formation de professeurs pour d'autres postes dans le système ou ailleurs?

M. Lapointe: Oui, c'est prévu dans notre travail. Il est même prévu que dans le cas d'un surplus d'employés — ce que nous ne prévoyons pas, mais ce cas-là est prévu, d'ailleurs, dans la Loi — il y aurait une responsabilité conjointe des conseils envers ces employés, suivant une certaine formule selon le pourcentage d'élèves qui viennent de ce conseil-là, et qu'on pourrait en partager un certain nombre et, à ce moment-là, faire un recyclage de ces personnes pour qu'elles s'assurent un emploi. Je pense qu'il y a eu un très bon dialogue sur tout cet aspect de la protection de l'employé.

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M. Allen: Merci beaucoup.

Mr. Campbell: I will just go back to part IV, subsection 17(2), where it deals with split jurisdiction. You are aware that other anomalies exist in which the head of the household presently determines the support of the household in general taxation.

I find that very difficult in today's age with male-female relationships where you find that perhaps the head of the household generally would be male. You would find then that the female is discriminated against by not having a choice in her input into what system the household shall support. I think it raises a broader question than what you raised, but it may be a past philosophy of the Ministry of Education on that, because the taxation bill was amended some few years ago. I just happened to be on municipal council when it happened, and I found it strange that there was not a general discussion about that perspective on taxation.

M. Beer: Je pense qu'il est temps, peut-être au nom du Comité, maintenant que nous avons ces deux messieurs devant nous, de vous féliciter pour le travail que le Comité de planification a fait. Il est sans doute très difficile de noter qu'il y a toujours certains problèmes, des ennuis peut-être, dans le projet de loi. Mais quand on essaie d'être père et mère d'un nouveau système, comme en effet vous avez essayé de le faire, il nous incombe de vous dire que vous avez fait un travail magnifique et, si je peux le dire à titre personnel aussi, puisque pour Maurice Lapointe, ça fait 20 ans; il a travaillé avec M. Bériault. Donc, c'est une sorte de quoi? grand-père, beau-père, père de toute une série de...

Interjection.

M. Beer: C'est ça. Alors, ce doit être extrêmement intéressant pour vous à titre personnel de voir l'évolution, ce qu'on a accompli depuis 1968. Je pense qu'il nous est parfois important, malgré les problèmes, de dire qu'on a accompli quelque chose de qualité et que nous voyons aujourd'hui, à Carleton et à Ottawa, des structures francophones vraiment importantes. Si on avait pensé en 1968 qu'on verrait ce qu'on a aujourd'hui, je ne sais pas qu'on eût cru qu'on en serait rendu là aussi tôt.

M. Lapointe: Monsieur le Président, ça m'a fait plaisir de revoir le secrétaire d'alors de la commission Bériault et de renouer connaissance et amitié. Il est vrai qu'il faut se replacer dans les perspectives historiques à certains moments pour s'éloigner du quotidien, mais je pense que le quotidien demande des réponses aussi. Mais cela ne doit pas nous empêcher de regarder les perspectives historiques de ce que nous sommes en train de créer.

M. le Président: Monsieur Comtois, Monsieur Lapointe, nous vous remercions beaucoup.

La prochaine présentation est celle des membres de direction, écoles de langue française d'Ottawa-Carleton. Would you come forward, please? Monsieur Gauthier?

M. Gauthier: C'est ça.

M. le Président: Pouvez-vous donner votre nom clairement, s'il vous plaît?

M. Gauthier: D'accord.

Mr. Campbell: Excuse me. I just wanted to make sure that we were at the four o'clock part of our meeting.

Mr. Chairman: Yes. On ours it says, "francophone principals of Ottawa-Carleton," and that is the membres de direction, écoles de langue française, Ottawa-Carleton, M. Georges Gauthier.

Mr. Campbell: I had not heard the term for "principal," "la direction," but that is OK.

MEMBRES DE DIRECTION ECOLES DE LANGUE FRANCAISE D'OTTAWA-CARLETON

M. Gauthier: Je suis Georges Gauthier, président d'une nouvelle association qui a vu le jour au mois de juin dernier. C'est une association qui regroupe toutes les personnes à la direction des écoles de langue française d'Ottawa-Carleton, soit les écoles séparées, élémentaires et secondaires et les écoles publiques, élémentaires et secondaires d'Ottawa et de Carleton. Elle inclut les directeurs et directrices aussi bien que les directeurs adjoints et les directrices adjointes de toutes les écoles qui seront regroupées pour former le conseil de langue française. Ce groupe a adopté le mémoire que je vous présente en ce moment, à une rencontre cette semaine; donc, c'est tout récent.

Le personnel à la direction des écoles de langue française d'Ottawa-Carleton se réjouit du fait que le projet de loi 109 a été présenté à l'Assemblée législative le 11 avril dernier, afin d'assurer dès cette année la création d'un conseil scolaire de langue française dans la municipalité régionale d'Ottawa-Carleton.

Réclamé depuis plusieurs années, ce conseil devait, entre autres, regrouper tous les francophones d'Ottawa-Carleton; faciliter l'offre des services éducatifs; mettre en commun des ressources présentement éparpillées dans quatre conseils; et permettre une gestion totale par les francophones, pour les francophones.

Le financement du conseil de langue française a toujours inquiété les éducateurs francophones de la région, qui ne voudraient pas hériter d'un système qui ne serait pas financé de façon à offrir une éducation de qualité comparable à ce qui existe pour la majorité anglophone.

Même si le projet de loi 109 ne répond pas totalement à ses espoirs, l'Association des membres de la direction des écoles de langue française d'Ottawa-Carleton désire indiquer son appui au projet de loi en principe, tout en réclamant certaines modifications au texte dans le sens des remarques qui suivent.

Premièrement, et je pense qu'on vous a déjà redit plusieurs de ces points-là dans un certain nombre de présentations, la définition de «francophone». Il nous semble que la définition de «francophone» est trop restrictive par rapport à certaines personnes, telles que les Néo-Canadiens, qui ne sont pas reconnus comme francophones si le français n'est pas leur langue maternelle, même s'ils ont pu étudier, eux ou leurs enfants, en français dans un autre pays. Il faudrait reconnaître leur droit de s'intégrer à la communauté franco-ontarienne et leur assurer la possibilité de se désigner comme contribuables francophones.

La compétence du conseil plénier et des sections, à la partie II: Il nous semble que le projet pêche par excès dans l'établissement des compétences exclusives de chacune des sections en excluant toute possibilité de transférer des sections au conseil plénier la compétence exclusive à l'égard d'une partie ou de la totalité d'une question décrite aux dispositions 4(1)1 à 18.

Par ailleurs, le niveau de protection de chacune des sections est très élevé, car tout transfert peut être assujéti à des conditions. La compétence transférée au conseil plénier est remise aux sections à la fin du mandat, ou à une autre date si les deux sections en conviennent. Donc, il nous semble qu'il y a là quand même des protections qui devraient être suffisantes pour encourager une plus grande mise en commun de certaines responsabilités.

Il faudrait que les deux sections travaillent ensemble dans plusieurs domaines afin d'assurer la raison d'être de la création d'un conseil de langue française. Or, comme vous le savez, au tout début de la création du conseil de langue française, on parlait d'un conseil, si on veut, qui n'en serait qu'un; qui aurait donc à la fois des écoles confessionnelles et d'autres qui seraient publiques mais qui seraient quand même gérées ensemble. Nous reconnaissons, par ailleurs, tout le débat constitutionnel qui a entouré la question.

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Il faudrait cependant, au niveau de la programmation, au niveau des conseillers pédagogiques, assurer une collaboration étroite et un partage de responsabilités afin que l'ensemble des francophones puisse avoir accès à une éducation de qualité et à une variété de programmes qui correspondent à ses besoins. Il faudrait que l'élève francophone qui passe d'une école d'une section à celle de l'autre section soit en mesure de faire la transition sans heurts et que les services offerts partout dans le conseil soient planifiés et coordonnés.

Un des aspects que nos membres considéraient au début de la semaine et qui malheureusement n'a pas été relevé pour être ajouté au texte que vous avez présentement, c'est la question de l'éducation permanente. Je pense qu'il y a quand même des domaines qui existent qui peuvent difficilement relever d'une seule section. Ce sont des choses qui devraient quand même s'y retrouver, et je pense qu'il serait peut-être important d'ajouter à la liste des responsabilités, possiblement, cet aspect de l'éducation permanente, puisqu'on reconnaît, et je pense que différentes études ont reconnu, le besoin des Franco-Ontariens dans ce domaine-là aussi bien que les autres. D'ailleurs, on a même reconnu dans certains domaines que les Franco-Ontariens pouvaient avoir des besoins encore plus pressants dans certains cas.

Les membres de la direction aimeraient soulever des questions concernant certains points qui se retrouvent présentement dans la section très restrictive dans le domaine de l'exclusivité, si on veut, qu'on ne peut pas du tout partager ou transférer. C'est la disposition 4(1)4, l'approvisionnement en matériel pédagogique et d'apprentissage. On reconnaît que le matériel pourrait être, à l'occasion, quelque peu différent dans une école confessionnelle par rapport à certains cours; mais dans l'ensemble, je pense quand même que le matériel pédagogique, le matériel d'apprentissage pourrait être développé conjointement et pourrait certainement être acheté en commun et même, dans certains cas, produit ensemble.

Pour ce qui est de la disposition 4(1)5, les écoles pour enfants déficients moyens et les cours de formation professionnelle, je pense qu'on ne peut pas se permettre de vouloir avoir dans chacune des sections des cours, ou

des écoles, ou des classes spécialisées, telles que des classes pour enfants autistiques; on ne peut pas se permettre d'avoir ça dans une école confessionnelle puis en avoir une autre dans une école non confessionnelle. Je pense qu'il y a des choses comme ça qui devraient être mises en commun.

Quant à la disposition 4(1)13, la définition des fonctions des enseignants et des autres employés, il y a place aussi, en partie du moins, pour des similarités entre la définition des fonctions des enseignants et des autres employés. Il peut y avoir certainement des fonctions comme telles qui appartiendraient à une section plutôt qu'à l'autre qui pourraient être définies par la section qui a les postes. Cependant, de façon générale, les enseignants qui vont se côtoyer dans différentes activités devraient quand même avoir des définitions de tâches semblables.

Quant à la disposition 4(1)16, les services d'orientation, et à la disposition 4(1)17, le perfectionnement des employés, ce sont là aussi des choses auxquelles on peut travailler ensemble et auxquelles on se doit de travailler ensemble. Si on ne peut pas le faire de façon totale, on peut au moins le faire en partie et, à ce moment-là, les sections complètent ce qui ne pourrait pas être mis en commun.

En ce qui concerne la fréquentation scolaire, à la partie III, le projet prévoit le droit de fréquenter une école secondaire de l'autre section, sans pour autant reconnaître ce droit au niveau élémentaire. Il est vrai, par ailleurs, que l'article 12 prévoit la possibilité d'une entente avec l'autre section. Il est possible, vu la grandeur du territoire desservi et la variété des programmes offerts, que certains parents contribuables, soit catholiques ou publics, désirent inscrire leurs enfants à des programmes différents qui pourraient se retrouver dans l'une ou l'autre des sections. Ne faudrait-il pas, à l'intérieur du nouveau conseil, permettre aux parents de choisir aussi bien à l'élémentaire l'école pour chacun de leurs enfants selon sa capacité et les programmes offerts?

Donc, la loi prévoit présentement, à la suite du parachèvement, qu'au niveau secondaire on peut le faire. Cependant, n'est-il pas étrange que, dans un nouveau conseil qui est un conseil francophone, le parent contribuable aux écoles séparées qui aurait des besoins particuliers au secteur public et y trouverait un programme qui convient à son enfant, ne puisse pas avoir... je ne veux pas dire seulement la possibilité, puisque la possibilité peut toujours être obtenue par la permission d'une section à l'autre, mais ne devrait-il pas y avoir un droit à l'intérieur d'un conseil d'être desservi par l'autre section?

En ce qui concerne le soutien scolaire, le paragraphe 17(2), qui décrit les règles qui s'appliquent à la détermination du soutien scolaire de deux ou plusieurs personnes qui, ensemble, sont propriétaires d'un terrain ou locataires et occupants d'un terrain, fait ressortir certains principes d'inégalité qui favorisent, d'une part, les conseils publics et, d'autre part, les conseils de langue anglaise. N'y aurait-il pas lieu de revoir cette situation afin de permettre une répartition des taxes selon le désir de chacun des colocataires ou copropriétaires? C'est un point, d'ailleurs, que vous soulignaient les représentants précédents.

Il en est de même du côté de l'élection puisque présentement, même si, de fait, vous avez un couple dont une personne est francophone et l'autre anglophone, et même si, de fait, les taxes étaient payées à l'école anglaise par suite de la décision de la personne qui est anglophone et qui désire faire cela, celle-ci à ce moment-là, même si le droit est acquis de fréquenter

l'école française, enlève quand même la possibilité à l'époux ou à l'épouse francophone d'élire des conseillers au conseil francophone.

Fonctions et pouvoirs du conseil de langue française, partie VI: Pourquoi faut-il prescrire, à l'article 27, l'enseignement de l'anglais? Le conseil et les sections n'exerceront-ils pas les pouvoirs et les fonctions attribués aux autres conseils de la province, et n'y a-t-il pas ailleurs dans la législation qui existe cette obligation d'offrir l'anglais de la cinquième à la huitième année? Faut-il le redire à l'intérieur d'un texte qui s'adresse à un nouveau conseil de langue française? Devrait-on y ajouter toutes les autres prescriptions qu'on retrouve dans différentes lois scolaires?

Finances, partie IX: Le financement adéquat du conseil de langue française est essentiel. Malheureusement, au départ le conseil de langue française ne pourra pas compter sur une évaluation résidentielle, agricole, industrielle et commerciale favorable, à cause des règlements provinciaux que l'on retrouve à la partie IV, entre autres. Il faudrait donc se fier au paragraphe 48(3) pour obtenir des subventions spéciales et temporaires jugées opportunes.

Il est important aux francophones que le nouveau conseil de langue française et ses sections puissent compter sur un financement stable et adéquat qui préservera l'autonomie locale. La population régionale doit connaître les projets de financement prévus à court terme et l'échéancier de l'établissement d'une solution permanente. Alors, je pense que le temps presse pour que les francophones soient rassurés en connaissant de façon très spécifique les projets de financement prévus à court terme, et puis également qu'ils aient une idée de ce qui s'en vient et de quand ça s'en vient.

Le transfert de bâtiments et de biens au conseil de langue française, partie XII: L'Association appuie les procédures décrites dans cette partie, y compris la révision des ententes dans chacun des conseils scolaires par le conseil plénier en décembre 1988. Il est très important que le nouveau conseil puisse démarrer avec sa juste part des bâtiments et des biens acquis par les conseils scolaires actuels. Les biens acquis pourraient aussi bien comprendre de l'ameublement, de l'équipement, des véhicules, des systèmes informatisés, des logiciels et bien d'autres choses requises à l'intérieur d'un conseil et auxquelles le personnel des écoles a eu accès dans le passé.

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C'est donc une inquiétude des membres de la direction de s'en assurer de fait. Parlons, par exemple, du niveau secondaire, où nous avons des systèmes informatisés qui se trouvent dans l'édifice administratif du conseil. Or, nous formons maintenant un nouveau conseil. Aurons-nous à notre portée des ordinateurs qui nous permettront de soutenir les systèmes informatisés requis pour nous aider à planifier de meilleurs services, planifier les horaires, planifier la cueillette d'information et tout ça?

Mutation d'employés au conseil de langue française, à la partie XIII: L'article 66 prévoit que les conseils de langue anglaise et le conseil de langue française doivent décider ensemble de certaines choses. Le point qui se retrouvait dans la dernière présentation, nous le soulignons également. C'est l'alinéa 66(1)b), entre autres, selon lequel il faudrait que tout le monde ensemble décide du nombre de postes que le conseil de langue française devra pourvoir à la suite de sa formation. Cet alinéa semble contraindre les conseils à prendre conjointement des décisions qui reviennent plutôt à chacun, ou à l'un ou à l'autre. Qui devrait décider du nombre de postes que le conseil

de langue française devra pourvoir à la suite de sa formation si ce n'est le conseil de langue française?

En terminant, l'Association veut être optimiste, veut espérer qu'on répondra à toutes les questions qu'on vient de soulever et à toutes les autres questions qui ont pu être soulevées par des gens qui avaient encore plus de temps que nous pour étudier chacune des clauses du projet de loi.

M. le Président: Merci beaucoup, Monsieur Gauthier. Des questions?

M. Allen: J'ai une question concernant la sécurité d'emploi lors du transfert des membres de la direction, qui ne font pas partie des arrangements faits par les associations des enseignantes et enseignants dans le système. Y a-t-il des arrangements adéquats, à l'avis de la direction?

M. Gauthier: D'accord. Les membres de la direction font partie, nécessairement, des différentes associations, telles que l'Association des enseignantes et des enseignants franco-ontariens. Donc, nous avons scruté le projet de loi avec nos représentants des associations professionnelles et nous sommes satisfaits des mesures qui sont là, en ce sens que les écoles vont passer et donc les gens en place vont passer également. Je pense que tout a été préparé de façon à préserver les droits qui avaient déjà été acquis au niveau des conseils. Les personnes qui sont en congé, par exemple, seraient protégées selon les ententes qui existent présentement dans les conseils existants. Alors, nous sommes satisfaits de ce qui est prévu.

M. Allen: Merci beaucoup. Je n'ai pas d'autre question. Je trouve le mémoire clair et direct et je vous en remercie beaucoup.

M. Gauthier: Merci.

M. le Président: Monsieur Gauthier, je répète les remarques de mon collègue. Je vous remercie beaucoup.

M. Gauthier: Merci.

M. le Président: Nous avons maintenant l'Association canadienne-française de l'Ontario, région d'Ottawa-Carleton. C'est Monsieur Sincennes?

M. Sincennes: Sincennes, oui.

Mr. Chairman: Would you repeat your name and affiliation before you begin?

ASSOCIATION CANADIENNE-FRANCAISE DE L'ONTARIO CONSEIL REGIONAL OTTAWA-CARLETON

M. Sincennes: Yves Sincennes, président de l'Association canadienne-française de l'Ontario de la région d'Ottawa-Carleton.

Monsieur le Président, je tiens à vous remercier de nous donner la chance de vous dire un mot au sujet de la naissance de notre conseil de langue française. L'Association canadienne-française de l'Ontario, régionale Ottawa-Carleton, est une des 22 régionales dans l'Ontario qui, avec 18 autres organismes, représentent les francophones de l'Ontario. L'ACFO régionale est dirigée par un conseil d'administration formé de membres élus lors de l'assemblée générale annuelle, à laquelle tous les francophones de la région sont invités à participer.

En 1986, la population francophone de la municipalité d'Ottawa-Carleton se chiffrait à 123 000. Permettez-moi de vous dire que, parfois, je me demande si les francophones d'Ottawa-Carleton ont une voix d'ensemble. J'espère vous dire aujourd'hui ce que les francophones d'Ottawa-Carleton veulent et j'espère également que, tout en écoutant tous les mémoires qui vous seront présentés, vous tiendrez compte du fait que la population d'Ottawa-Carleton est représentée par l'ACFO et ce qu'on veut vous dire, c'est un message court et assez clair.

Le domaine de l'éducation a toujours été de prime importance à l'ACFO Ottawa-Carleton, et il y a déjà dix ans, j'étais un de ceux qui travaillaient à la promotion d'un conseil homogène de langue française. On veut un conseil homogène de langue française et on le veut aussitôt que vous pourrez nous le donner. C'est la raison pour laquelle l'ACFO régionale Ottawa-Carleton appuie sans réserve la mise sur pied d'un conseil homogène de langue française.

Mais c'est pour manifester de nouveau sa préoccupation de faire reconnaître les droits des francophones à gérer leurs propres établissements scolaires que l'ACFO régionale Ottawa-Carleton se présente devant le Comité. Nous sommes capables de gérer nos choses et nous pensons que nous avons le droit de le faire le plus rapidement possible.

Le projet de loi, cependant, devrait nous donner des garanties en ce qui concerne le financement. Je ne veux pas m'étendre là-dessus, je pense que tous les intervenants d'hier et d'aujourd'hui vous ont dit qu'ils avaient des craintes et que la population avait des craintes sur le financement. On nous assure que nous n'aurons pas moins d'argent que nous n'en avons présentement. On m'a même dit encore il y a deux jours que nous en aurions probablement un peu plus. Je dois vous dire que nous en voulons autant que les anglophones en avaient dans le passé. Je pense qu'il serait juste que les francophones, dans une province comme l'Ontario, aient accès aux mêmes services et qu'ils devraient avoir, par élève, le même montant d'argent pour préparer nos jeunes au monde de demain.

Un financement adéquat sous-entend aussi la prévision d'un fonds de démarrage suffisant pour la mise en oeuvre de ce nouveau conseil. Les contribuables de ce conseil ne devraient pas avoir à débours des frais supplémentaires. Je tiens à attirer votre attention sur le mémoire que vous avez reçu ce matin de l'Association des enseignantes et des enseignants franco-ontariens, association dont je suis fier de faire partie, qui vous donnait des recommandations visant, entre autres, à assurer un financement équivalent à celui que les conseils de langue anglaise ont depuis toujours.

Cependant, nous vous demandons d'écouter les gens qui vous ont recommandé de faire les amendements nécessaires et d'assurer un financement qui devrait donner une chance égale à toutes et à tous dans cette province, dans notre province.

C'est avec joie que l'ACFO régionale Ottawa-Carleton verra, dès janvier prochain, nous l'espérons, la création d'un conseil scolaire de langue française longtemps attendu dans la municipalité d'Ottawa-Carleton. Les francophones d'Ottawa-Carleton, par leur conseil d'administration, par leur président, vous disent aujourd'hui: Donnez-nous ce que vous êtes en train de préparer, faites attention qu'on ait un financement qui soit juste et équitable, et nous allons vous en être reconnaissants. Merci.

M. le Président: Merci beaucoup, Monsieur Sincennes. Y a-t-il des questions?

M. Allen: Je vous remercie de votre mémoire. J'ai noté que vous avez donné votre appui aux recommandations des autres représentants concernant le financement équitable, etc. Mais je voudrais vous demander si vous êtes d'accord avec la suggestion que la définition de <francophone> pour fins de ce conseil soit élargie pour inclure parmi les contribuables et les parents du conseil français les immigrants dont la deuxième langue est le français.

M. Sincennes: Permettez-moi de vous dire, quant aux gens qui arrivent des autres pays, des autres cultures, des autres ethnies, que s'ils arrivent à Ottawa et ne parlent ni le français ni l'anglais, il nous paraît juste que ces gens-là aient le choix de s'intégrer à la communauté franco-ontarienne ou à la communauté anglaise ontarienne. Cela nous semble juste.

En passant, ça me fait penser que tantôt quelqu'un a fait remarquer qu'en ce qui concerne nos taxes, si on est anglophone, il faut donner nos taxes aux anglophones, et aux francophones... Je me permets de vous citer quelque chose. Je vis présentement avec ma soeur qui, par l'histoire, a fait que sa fille va à l'école anglaise, et avec la Loi qui nous est présentée actuellement, je devrais, comme président de l'ACFO régionale, être un anglophone l'an prochain, et je pense que c'est injuste. J'ai dû m'organiser et ma soeur est devenue chambreuse et non pas colocataire. Je pense que c'est un non-sens qu'une loi m'oblige, moi, francophone, à appuyer le système anglophone durant le temps que ma soeur envoie sa fille en immersion pour des raisons historiques que je n'ai pas à juger.

Je pense qu'il faut se pencher sur l'invitation qui vous a été faite tantôt par le Conseil de planification scolaire. Il me semble un non-sens que je sois obligé de payer mes taxes au système anglais.

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M. Allen: Merci beaucoup.

M. le Président: C'est tout?

M. Allen: C'est tout.

M. le Président: D'autres questions? Non? Merci beaucoup encore une fois.

M. Gauthier: Merci beaucoup, Monsieur le Président.

Mr. Chairman: Do we have the next group?

Mr. Allen: Mr. Chairman, I would suggest a seventh-inning stretch.

Mr. Chairman: OK.

The committee recessed at 4:42 p.m.

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M. le Président: Nous avons maintenant le Ralliement des associations parents et instituteurs de Carleton, M. Denis Thompson, président.

RALLIEMENT DES ASSOCIATIONS PARENTS ET INSTITUTEURS DE CARLETON

M. Thompson: C'est bien ça, Monsieur.

Monsieur le Président, mesdames et messieurs du Comité, je vous adresse la parole aujourd'hui à titre de président du Ralliement des associations parents et instituteurs de Carleton. Le RAPIC est une association regroupant les associations parents et instituteurs des 19 écoles francophones du Conseil des écoles catholiques romaines de Carleton. Ces API représentent présentement 4608 familles et une population d'élèves de 6477, soit environ le tiers de la population du nouveau conseil.

Les objectifs du RAPIC sont: de développer des moyens de communication entre les API et les différents agents d'éducation; de représenter en bloc les intérêts communs; d'appuyer les requêtes individuelles des API; et de collaborer avec la Fédération des API provinciale et l'Association régionale des parents et instituteurs d'Ottawa-Carleton.

Compte tenu de ses objectifs, nous nous sommes vus dans l'obligation de venir vous faire part des vœux des parents du Conseil des écoles catholiques romaines de Carleton face au conseil scolaire de langue française d'Ottawa-Carleton. Nous pourrions d'entrée de jeu faire valoir que cette population a droit à une éducation en langue française en vertu de l'article 23 la Charte canadienne des droits et libertés, ou encore de l'article 93 de la Loi constitutionnelle. Telle n'est toutefois pas notre intention.

D'abord et avant tout, les parents veulent un système éducatif assurant une éducation de qualité à nos enfants francophones, une qualité d'éducation égale à celle de la majorité. Cela dit, nous croyons que la création du conseil scolaire de langue française d'Ottawa-Carleton s'avère un élément clé de cette qualité d'éducation.

N'étant pas des spécialistes de la loi, nous n'émettrons pas de commentaires sur le projet de loi ni sur sa constitutionnalité. Nous avons l'intention de commenter les sujets d'intérêt particulier aux parents et nous vous communiquons leurs points de vue. Nous sommes d'accord, en principe, avec les énoncés du document préparé par le Comité d'étude pour l'éducation en langue française dans Ottawa-Carleton, présidé par M. Albert Roy. Nous exigeons la mise en place du conseil dès décembre 1988.

Le gouvernement se doit d'user à fond de son pouvoir législatif et de créer le conseil afin de respecter ses engagements et nos attentes. Les menaces de poursuite devant les tribunaux par des tierces parties ne sont pas suffisantes pour retarder le projet. Le pouvoir judiciaire, dont le rôle principal demeure l'amélioration de l'administration des lois du Canada, pourrait décider de toute question de constitutionnalité une fois le conseil en place. Toute amélioration possible pourra être mise en place à une date ultérieure une fois que les tribunaux auront rendu leurs décisions.

Au sujet de la gestion, de la nature et de la structure du conseil: Compte tenu des réalités sociales et économiques de la région, nous croyons que le conseil devra, pour être viable, regrouper tous les élèves francophones de la région d'Ottawa-Carleton. L'appellation de «conseil scolaire de langue française d'Ottawa-Carleton» nous semble appropriée pour désigner ce conseil, créé sur une base linguistique avec deux secteurs, soit confessionnel et non confessionnel. Celui-ci se doit d'être indépendant de tout autre conseil ou structure régionale afin de desservir adéquatement les francophones de la région.

Les lois 30 et 75 n'étaient pour nous que des étapes à franchir vers la mise en oeuvre du conseil scolaire de langue française.

Est-ce que je parle trop vite pour l'interprète? Est-ce que ça va?

M. le Président: Cela va très bien, Monsieur Thompson.

M. Thompson: D'accord, merci.

M. le Président: Même pour moi.

M. Thompson: Ah! D'accord.

Le parachèvement réglera l'une des injustices historiques en matière de financement. La gestion des écoles de langue française oriente présentement les conseils d'enseignement en langue française de la région vers l'identification des éléments critiques à la gestion des écoles. Ainsi, toute négociation future entre les conseils pour la mise en oeuvre du nouveau conseil devrait être facilitée.

Les quatre conseils actuels de la région d'Ottawa-Carleton feront face à un changement avec la création du conseil scolaire de langue française. Tout changement occasionne une résistance. Espérons que nos élus négocieront de bonne foi. Nos élus à tous les paliers devront s'engager à faciliter la période de transition. Une volonté de la part du gouvernement devra aussi être ressentie et évidente aux quatre conseils. Si ceux-ci ne peuvent en arriver à une entente, l'arbitrage sera chose nécessaire.

Le nouveau conseil devra protéger les droits linguistiques et les droits religieux, tout en assurant une collaboration sur le plus grand nombre de dossiers possible pour éviter le dédoublement d'effort et ainsi réduire ses engagements financiers. Une fois le conseil en marche, il devrait sans doute envisager la possibilité d'étendre ses frontières pour répondre aux désirs d'une population avoisinante, s'il y a lieu. Les mécanismes devront être en place pour répondre à cette éventualité.

Electeurs et conseillers du conseil scolaire de langue française: Un recensement a récemment été effectué dans le but d'identifier les francophones de la région qui veulent donner leur appui au nouveau conseil. Ceux-ci se sont identifiés aussi à un secteur, soit confessionnel, soit non confessionnel. Ces électeurs auront ainsi le droit d'élire les conseillers devant représenter leur secteur. Le projet de loi propose qu'un maximum de 21 conseillers soient élus et cela nous semble raisonnable. Tout candidat au poste de conseiller sera contribuable au secteur qu'il cherche à représenter.

Nous appuyons un système d'élections par quartier dans la région puisque, de cette façon, chaque contribuable aurait une représentation garantie, un élément très important dont il faut bien tenir compte.

A ce moment-ci, j'aimerais vous présenter M. Bernard Potvin, vice-président du Ralliement des API de Carleton.

M. le Président: Monsieur Potvin, bienvenue. Nous en sommes à la page 5.

M. Thompson: Je reprends. Nous appuyons un système d'élection par quartier dans la région puisque, de cette façon, chaque contribuable aurait une représentation garantie, un élément très important dont il faut bien

tenir compte. La représentation par secteur, confessionnel et non confessionnel, doit être fondée sur les effectifs; toute autre représentation laisse ouverte la possibilité d'une représentation injuste. D'après nous, les enfants sont la raison d'être du système d'éducation et, par conséquent, la population des élèves devrait être, par définition, l'élément qui détermine la représentation.

Financement: Un financement adéquat n'est pas toujours synonyme d'une éducation de qualité mais peut sûrement y contribuer dans une large mesure. Le gouvernement doit se pencher sur la question du financement et éliminer les injustices actuelles. Ce projet, au niveau de la province, ne s'avère guère une raison de retarder la création du nouveau conseil, surtout si le financement intérimaire dudit conseil assure une même ou une meilleure qualité d'éducation à nos enfants. Nous ne désirons pas la mise en place du nouveau conseil sans la garantie d'un financement intérimaire à court, moyen ou long terme si nécessaire, qui permettra et assurera à nos enfants une éducation d'une qualité égale à celle de la majorité.

De plus, la mise sur pied du nouveau conseil impliquera des coûts additionnels; un fonds de démarrage adéquat est nécessaire. Il serait entièrement inacceptable de lancer un nouveau conseil qui se verrait limité dans ses possibilités à cause de situations héritées d'ailleurs. Il n'y a pas lieu de commencer une course en débutant dix pas derrière le point de départ. Un fonds de démarrage adéquat éliminera un tel écart.

Programmes scolaires, y compris l'enseignement de la religion: En tant que représentants des API, nous ne voulons pas, aujourd'hui, faire une analyse détaillée des programmes scolaires. Tous les programmes qui seront mis sur pied lors de la création du conseil scolaire de langue française devront assurément respecter les droits acquis en matière de langue et de religion. Nous répétons que nous n'accepterons d'aucune façon, lors de la mise en oeuvre du conseil en décembre 1988, un recul sur le plan de la qualité de l'enseignement offert à l'heure actuelle.

A cet égard, les programmes de l'enfance en difficulté, d'éducation permanente, d'éducation aux paliers élémentaire et secondaire, des garderies francophones, ainsi que les écoles spécialisées, devront tous se poursuivre avec, comme optique, une amélioration et un accès universel pour tous les francophones. La possibilité du dédoublement et du chevauchement de ces programmes sera sans doute amoindrie lorsqu'il n'y aura qu'un conseil.

L'enseignement religieux demeure un droit acquis, et le nouveau conseil devra en assurer la sauvegarde. Ainsi, il reviendra au secteur confessionnel du conseil de gérer ses écoles dites confessionnelles. Il tiendra compte du fait que l'éducation religieuse est faite par l'Eglise, la famille et l'école. C'est aux conseillers élus par les contribuables du secteur confessionnel de gérer le programme d'enseignement religieux. En tant que contribuables au secteur confessionnel, nous nous attendons que cet enseignement soit de première qualité et que tous les cours de religion, obligatoires ou optionnels, soient crédités.

Le transfert des écoles des quatre conseils ayant été effectué, il y aura lieu de répartir les écoles à l'intérieur du nouveau conseil selon les besoins. C'est sans doute la responsabilité des élus de chaque secteur, soit confessionnel ou non confessionnel, d'arriver à une entente. Il va sans dire que les deux secteurs peuvent se compléter et devront se compléter dans certains lieux où les effectifs d'un secteur sont peu nombreux. La possibilité de coexistence à l'intérieur d'une école ne doit pas être exclue par les deux

secteurs comme une nécessité de survie. N'oublions jamais qu'une telle collaboration pourrait s'avérer nécessaire.

1700

Personnel enseignant et de soutien: Nous ne pouvons qu'espérer que les changements n'aient aucun effet négatif sur le personnel et, s'il devait en être ainsi, qu'il sera minime. Dans le but d'assurer ou d'améliorer encore une fois la qualité de l'éducation de nos enfants, nous nous attendons que le nombre de postes d'enseignement demeure le même au moment où entrera en fonction le nouveau conseil. Naturellement, cette transition ne devrait pas inciter le départ des meilleurs éléments du personnel.

En résumé, le Ralliement des API de Carleton exige les garanties suivantes lors de l'établissement du conseil scolaire de langue française dans la région d'Ottawa-Carleton: une qualité d'éducation égale à celle de la majorité; une représentation garantie pour chaque contribuable francophone; et un financement intérimaire juste, équitable et adéquat. Nous ne croyons pas que ces exigences soient exagérées. Ce sont là les conditions d'une éducation de qualité, que nous soyons francophones ou anglophones, catholiques ou non.

En terminant, nous aimerions citer le ministre de l'Éducation (M. Ward) lors du dépôt en Chambre du projet de loi:

<Le projet de loi marque l'aboutissement d'autant d'aspirations à la reconnaissance du droit à l'éducation en français pour la minorité linguistique de l'Ontario. J'estime également qu'il atteste l'engagement de notre gouvernement à reconnaître le droit à l'éducation en français de notre minorité francophone en Ontario...>

<Monsieur le Président, je suis heureux d'affirmer aujourd'hui que notre gouvernement sera fidèle à sa promesse.>

Si vous avez des questions à poser, nous sommes à votre disposition. Sinon, je vous remercie de l'attention et du temps que vous nous avez accordés aujourd'hui. Mesdames et messieurs du Comité, le moment est venu. Merci.

M. le Président: Merci, Monsieur Thompson. Charles Beer a des questions, et puis Sterling Lyon et Yvonne O'Neill.

Mr. Campbell: I'm on your side.

Mr. Beer: It's late in the day.

M. le Président: C'était une longue journée.

Mr. Beer: Thank you, Margaret Thatcher.

Je pense vous dire d'abord qu'il est toujours bon de recevoir un mémoire des API puisqu'une chose est sûre: durant toute l'histoire des écoles de langue française, les API ont joué un rôle extrêmement important; il est donc bon d'avoir des représentants des parents devant nous aujourd'hui, non pas simplement des professeurs, des administrateurs, des conseillers. Même si ceux-ci sont très importants, après tout, le système existe pour nos enfants, et les parents doivent certainement jouer un rôle très important dans le système.

Durant nos séances, surtout dans la région de Carleton, j'ai cru m'apercevoir d'une certaine inquiétude chez les supporteurs des écoles francophones publiques en ce qui concerne le nouveau conseil et les relations entre ses deux sections. Je me demande d'abord s'il y a un groupement des API des parents francophones où les étudiants sont dans les écoles publiques, et deuxièmement, si votre association a travaillé ou a eu des discussions avec ces parents pour discuter de certaines des inquiétudes soulevées devant notre comité.

M. Thompson: D'accord. En réponse à votre question, oui, il y a une association, l'Association régionale de parents et d'instituteurs d'Ottawa-Carleton, dont la présentation est prévue pour 17h30. Cette association regroupe les associations parents et instituteurs des quatre conseils de Carleton et d'Ottawa. Alors, pendant sa présentation, l'Association régionale de parents et d'instituteurs d'Ottawa-Carleton va assurément parler du consensus de cet organisme-là.

Quant au Ralliement des API de Carleton, nous sommes une association de 19 écoles primaires et intermédiaires du Conseil des écoles catholiques romaines de Carleton. Alors, nous n'avons pas de membres de la seule école publique francophone du secteur public.

M. Beer: Jusqu'ici, donc, vous n'avez pas vraiment ressenti la nécessité de parler avec l'autre association, c'est-à-dire de travailler avec eux autres.

M. Thompson: En ce qui concerne la nécessité, je pense que la collaboration s'est faite au niveau de l'Association régionale. Alors, il faut revenir au mandat et à l'existence de notre groupe.

M. Beer: D'accord.

M. Thompson: On ne peut pas parler, d'après notre constitution, au nom du secteur public lorsque nous venons faire une présentation; je pense que le mandat de la collaboration avec le secteur public demeure au niveau de l'Association régionale. Mais je tiens à souligner que nos API représentent environ le tiers de la population éventuelle du nouveau conseil.

M. Beer: Il se peut qu'avec le nouveau conseil on ait besoin de certains liens qui se développeront entre ces groupements de parents parce qu'ils auront un intérêt commun.

M. Thompson: Absolument. C'est à l'ordre du jour de notre prochaine réunion.

M. Beer: Bon, d'accord. Je pense parfois que quand les gens sont très impliqués, c'est-à-dire dans les problèmes quotidiens, d'avoir autant de parents qui pourraient peut-être ajouter un certain point de vue un peu de loin, peut parfois régler des problèmes qui pourraient se produire. C'est simplement que moi, un nouveau venu ici, j'ai la forte impression qu'on a peut-être besoin de ces liens. J'aurais sans doute l'occasion de poser des questions à l'autre groupement aussi.

M. Thompson: Oui; je ne peux pas répondre pour M. Gadbois.

M. Beer: Merci beaucoup.

M. le Président: L'ancien premier ministre du Manitoba, Sterling Campbell.

Mr. Campbell: Mr. Chairman, you are giving me a complex, between Norm Sterling and Sterling Lyon.

I want to raise the question because I think this is the first time a group has come in to deal with the apportionment in elections and the organizing of elections of confessional and nonconfessional sections or boards, if you will.

I just want to be clear. When you use the French term "quartier," which I understand in English to be "ward" or "elected area," you are not necessarily talking about trans-municipal boundaries. That is, if you took as an example that, say, Rockcliffe may be a portion of some other part of a municipality, would that be of concern to you, or is your overriding concern equal representation across the region?

If, for example, an Ottawa board and a Carleton board merged for the French language, would there be more of a concern along municipal lines or from the regional perspective of having a board formed?

Mr. Thompson: I will answer that in two fashions, one being that I do not think we would limit ourselves to the municipal lines. The one thing we want to ensure is equal representation for every individual, which, with the way the system works now, you do not necessarily have.

What we would like to see—and you probably have to come back to the number of students in the board to determine what your boundaries might be—is for everyone to have a voice or a trustee speaking for him at the school board table, which is not the case now.

Mr. Campbell: OK, that was part B of my question. Was it the student or the ratepayer? Given that families are of different sizes, there would be a number of ratepayers or electors, if you will, rather than students. I want to clarify what you meant, because I thought I did hear that. I just want clarified whom you were speaking about, students or ratepayers.

Mr. Thompson: I would suggest it would be both. If you are looking at the number of students at that point in time, those are the individuals who are in the system right now and those are the individuals who should have and have the greatest concern, I would suspect, for the quality of education that is being offered to the students at this point in time. Therefore, we are looking at apportioning by the number of students as opposed to ratepayers.

1710

Mr. Campbell: But you may have electors who would support the French-language system (a) who do not have children or (b) whose children have passed through the system and, therefore, they would not have a say. I would be concerned with that scenario.

Mr. Thompson: No, they would be represented. Each individual would be represented. In terms of the size, in determining your boundaries you may want to look at your number of students within certain boundaries. You may have a larger number of ratepayers in one area with no students actively registered in school right now, but they would still have representation at the board table.

On the other hand, if you pose it the other way—and I will reverse your question—if you went by ratepayers, you could conceivably have ratepayers

with no children in the education system having the largest representation and the largest voice at the board table. I do not know if that is appropriate or not.

Mr. Campbell: I might conclude, then, by saying that the common practice across the province, no matter what electoral system you are using, is representation by population, meaning the ratepayer. That is what I thought I heard when you were talking about students, and I wanted to clarify that that was indeed what I heard. Thank you.

Mrs. O'Neill: I presume, but maybe I should not, gentlemen, that you know there is a companion piece of legislation that is going forward at this time, Bill 125, that deals with representation by population for trustees, and although there are guarantees built into this bill, the principles of that bill would be applied here. So I think you should try to discuss that, reflect on it as a group of parents and apprise yourselves of the contents of that bill.

I was very happy, as I have been today, whenever a brief presents something to do with curriculum, because that does not seem to be coming up nearly as often as I would like to see it. The area of curriculum that you seem to highlight is religious education and credits for such. At the present time I presume there are credits given for religious education within some of the French-language schools. Is that correct?

Mr. Thompson: Yes.

Mrs. O'Neill: And at this point, as far as I understand the regulations of the ministry, that is up to two credits for secondary school purposes for religious education?

Mr. Thompson: I believe so.

Mrs. O'Neill: Are you suggesting that that be broadened in your presentation?

Mr. Thompson: No. I think what we are saying is that they should be credited. We would not see that lessened.

Mrs. O'Neill: OK. So you are happy with the status quo of two credits?

Mr. Thompson: I think it is a question of letting the trustees manage it and letting administrators determine what is probably the best approach. Then, once they develop their program, it should definitely be credited. Until you have a chance to see what they are putting forth, it is difficult to say it should be better or it should be less.

Mrs. O'Neill: The reason I am asking is that, as you know or likely know, there are other groups in the province that are suggesting that we have up to four credits—that is, one per year—because in many of the separate Catholic schools or publicly supported Catholic schools in this province, religion is still considered obligatory in each of the four grades at the high school level. I am just wondering if that is also part of your thrust.

Mr. Thompson: I think there was a question in our discussions that we have arrived at a conclusion that there should definitely be courses. Now, whether that should happen to be every year at the high school level and the

broadening from two to four credits, I must admit, we have not addressed in that sense.

Mrs. O'Neill: OK. I just wanted to know that. I would really hope and I would ask your group to continue to pursue the area of curriculum. I think it is very healthy for parents, since you signed the option sheets for your children, to be very interested in curriculum.

M. le Président: Monsieur Thompson et Monsieur Potvin, nous vous remercions beaucoup pour une excellente présentation. Je m'excuse. Richard Allen.

M. Allen: Je pense que je suis le seul membre de notre comité qui a été membre d'un API. Je suis donc en conflit d'intérêts. J'ai néanmoins une question. Il s'agit de la définition de <francophone>. Nous avons entendu dire fréquemment pendant les présentations de ces deux jours qu'il est important d'élargir la définition pour inclure les immigrants non anglophones dont la deuxième langue est le français. L'API est-elle d'avis qu'il soit important de faire cette démarche en ce moment?

M. Potvin: Si je peux répondre, non, nous ne nous sommes pas penchés directement sur cette question, la définition de <francophone> mais sur le survol des dossiers francophones auxquels nous nous sommes attachés.

Il faut quand même faire la distinction entre ce qu'on peut appeler le noyau des francophones, dont on doit assurer la survie - c'est-à-dire que lorsqu'on parle de fonds pour être capable de fonctionner, pour être capable d'assurer des choses, c'est qu'on parle d'une situation d'urgence - et certains autres groupes. Si je comprends bien votre question, lorsqu'on parle de groupes francophones, qu'ils soient de langue seconde ou tout simplement d'immersion, qui aimeraient se sensibiliser à la culture francophone, je considérerais cela comme de la chirurgie plastique. Je veux dire que leur mandat est différent, puis ils ont des besoins différents.

Alors, il faudrait faire bien attention, lorsqu'on fait la mise en oeuvre d'un conseil scolaire de langue française, qu'on est là pour répondre aux besoins du noyau clé qui doit assurer la survie de l'élément francophone en Ontario. Si, du côté anglophone dans un conseil scolaire, on désire offrir des services et offrir un enseignement en français dans un programme d'immersion, on a le droit de le faire. Par contre, qu'on s'assure de leur donner les fonds qu'ils revendiquent, mais d'une autre façon. On doit s'assurer de bien faire la distinction entre les deux groupes et non de faire un mélange.

M. Allen: Oui, je comprends la différence entre les programmes d'immersion et les programmes franco-ontariens, vraiment. Mais il est important à votre communauté de faire croître la population franco-ontarienne, et il pourrait être possible de obtenir cette croissance en y intégrant les immigrants non anglophones qui veulent s'attacher à vos communautés. Je pense donc qu'il est peut-être important d'avoir une définition qui les inclue.

M. Thompson: En réponse, je pense que si on revient à notre thème, c'est d'abord que ça ne devrait pas nuire à la qualité de l'éducation offerte aux francophones à ce moment-là. Je ne pense pas qu'il y ait de difficulté à inclure ces individus et d'élargir la définition, mais il ne faut pas l'élargir jusqu'au point où, à certains moments, l'individu ou l'élève ne pourrait peut-être pas comprendre le français et ses parents ne sont pas en mesure de l'aider à s'exercer à l'utilisation du français à la maison, ce qui

veut dire que le professeur doit passer beaucoup plus de temps avec cet individu ou cet élève-là.

On sait déjà que les rapports professeur-élèves sont quand même assez élevés, et de dévouer beaucoup de temps à un élève à cause de la langue et de la compréhension de la langue, pour nous, nuirait à la qualité de l'éducation offerte au reste de cette classe-là. Alors, si on revient à notre thème, s'il n'y a aucune diminution de la qualité de l'éducation, à ce moment-là la définition peut être élargie autant que vous le voulez. Mais s'il se trouve que le résultat nuit au reste des élèves, à ce moment-là ce serait probablement moins acceptable. Je ne sais pas si ça répond à votre question.

1720

M. Allen: Oui, car dans les réseaux anglophones, c'est en un sens la même question. On a besoin quand même de subventions dans les périodes de transition vers une compétence pour la maîtrise des matières éducatives dans le système anglophone ou francophone.

M. Thompson: Absolument; ça marche des deux côtés.

M. Allen: Merci beaucoup.

M. Beer: Puis-je ajouter juste une chose? Je pense qu'on parle ici, par exemple, de gens dont le français n'est pas la langue maternelle. Mais certains groupes qui viennent d'Europe, ou les Haïtiens, les Vietnamiens, parlent français chez eux; donc, il y a un groupement de gens chez qui cette sorte de problèmes ne se pose pas et qui pourraient, en effet, contribuer à la croissance de la population francophone. C'est en ce sens surtout que nous y pensons, et aussi parce que maintenant le système fait qu'on demande à tout le monde de s'identifier selon toute une série de catégories, y compris la langue parlée à la maison.

M. Potvin: Juste un éclaircissement. Malheureusement, dans le dernier recensement justement, certains de ces gens-là ont été exclus d'être capables de s'identifier; ça, c'est malheureux.

Je veux faire aussi la distinction à savoir qu'on ne parle pas nécessairement du noyau, on ne veut pas dire tout simplement l'élite. Il faut faire bien attention à ça. C'est qu'on parle de l'élément des Franco-Ontariens, de ce qui se vit. Il faut certainement être capable de favoriser l'intégration là où il est possible de le faire, mais non pas au détriment de ceux qui doivent justement assurer la survie de ce qu'on veut essayer de garder.

M. le Président: Messieurs, merci beaucoup encore une fois. Vous pouvez constater que vous n'avez jamais beaucoup de questions. Merci beaucoup.

Maintenant, c'est la Fédération des associations de parents et d'instituteurs de langue française de l'Ontario.

Would you come forward, please? The committee will notice that there is a typographical error in our program. It is "instituteurs," not "institutions."

Je crois que M. Pellerin n'est pas ici. C'est Monsieur Gadbois?

ASSOCIATION REGIONALE DE PARENTS ET D'INSTITUTEURS D'OTTAWA-CARLETON

FEDERATION DES ASSOCIATIONS DE PARENTS ET D'INSTITUTEURS
DE LANGUE FRANCAISE DE L'ONTARIO

M. Gadbois: Denis Gadbois, président de l'Association régionale de parents et d'instituteurs d'Ottawa-Carleton.

Mme Yamasaki: Marguerite Yamasaki. Je représente aujourd'hui la Fédération des associations de parents et d'instituteurs de langue française de l'Ontario, qui est un mouvement provincial.

Mme Lafrenière: Manon Lafrenière. Je suis membre de l'exécutif de l'Association régionale des API d'Ottawa-Carleton.

M. le Président: Merci beaucoup.

M. Gadbois: Bonjour, mesdames et messieurs, Monsieur le Président. La Fédération des associations de parents et d'instituteurs de langue française de l'Ontario, dont nous sommes membres, a été fondée le 18 juin 1951 et incorporée en vertu d'une charte provinciale le 25 mars 1954. La Fédération a été créée afin de donner la parole aux parents qui s'intéressent à l'éducation de leurs enfants et a choisi comme devise «Collaborer pour éduquer».

Notre président fondateur, Markland Smith, qui s'adressait aux parents lorsqu'il écrivait la préface à notre publication Parents à l'oeuvre en 1984, s'est exprimé ainsi:

«La Fédération a pour but de donner aux enfants, jeunes gens et jeunes filles, l'éducation physique, intellectuelle, morale et sociale requise pour leur permettre de devenir des citoyens convaincus de tous leurs devoirs et capables, non seulement de gagner leur vie, mais aussi de rendre service à la société, par leurs connaissances linguistiques, technologiques, économiques, scientifiques, religieuses et morales, ainsi que par une vie exemplaire et un patriotisme éclairé. Tout ce qui concerne leur culture française et artistique intéresse les API (exemple, les parents), de même que les traditions profondes et durables des Franco-Ontariens. Ce sont les jeunes qui assureront la relève. Travaillons ensemble à les éclairer et à les conduire dans la bonne voie et vers les sommets les plus hauts. Que leur idéal soit grand et réaliste.»

Conscients de nos responsabilités à titre de parents et en tant qu'organisme, nous nous sommes présentés devant le Comité d'étude pour l'éducation en langue française d'Ottawa-Carleton. Nous avons aussi exprimé nos réactions au rapport du comité Roy. Lors de ces deux présentations, nous avons fait connaître les grands besoins des Franco-Ontariens en matière d'éducation. Nos interventions se sont toujours basées sur des constatations dont les preuves sont données par différents rapports, en particulier: «Le haut taux de décrocheurs et le taux d'analphabétisme, la faible fréquentation des francophones au niveau collégial et universitaire.»

Pour des raisons historiques que nous devrions tous connaître, le financement des écoles francophones a toujours été défavorisé. Le nouveau conseil scolaire de langue française qui est sur le point d'être mis en place, va-t-il vraiment répondre à nos attentes? Va-t-il aplanir toutes les difficultés? La condition préalable au regroupement des francophones sous l'égide d'un conseil scolaire réside dans le respect intégral de nos droits acquis.

Par conséquent, en conformité avec le choix fait par les parents que ce conseil aura la responsabilité de répondre aux besoins des francophones, nos jeunes devront pouvoir bénéficier, dans leur propre langue et en fonction de leur culture, de tous les services qui leur sont nécessaires pour s'épanouir pleinement, ainsi que des structures d'animation et d'encadrement pédagogique adaptées à cette fin.

La création de ce nouveau conseil doit être l'aboutissement logique d'un long cheminement parcouru par les francophones en vue d'obtenir une éducation de qualité pour leurs enfants. Nous voyons l'établissement du conseil scolaire de langue française comme une étape décisive dans l'évolution de notre collectivité franco-ontarienne.

1730

J'aimerais ouvrir une parenthèse qui voudrait dire que nous demandons que l'éducation de nos enfants soit gérée par un conseil de langue française. Tout doit être mis en oeuvre pour favoriser des relations harmonieuses entre des partenaires qui, jusqu'ici, n'ont guère travaillé ni en commun ni aussi harmonieusement que possible.

Cependant, le projet de loi 109 ne nous garantit aucun financement. Certes, des octrois sont promis; mais les octrois, nous le savons tous, sont souvent susceptibles de varier en fonction d'autres besoins ou de décisions émanant de personnes en haut lieu. Si un suivi avait déjà été donné au rapport de la commission Macdonald, nous aurions pu nous prononcer clairement. Nous demandons donc que la Loi nous donne la garantie que nous aurons toujours les fonds nécessaires pour assurer à nos enfants les mêmes possibilités d'éducation que celles qui sont, par ailleurs, offertes à la majorité.

Soyez assurés, mesdames et messieurs, que l'ARPIOC est prête à apporter sa collaboration aux autres intervenants et qu'elle veillera à ce qu'une éducation de qualité soit accessible à tous, sans distinction de croyance, d'origine, de milieu social, de culture, d'âge, de sexe, de santé physique ou d'aptitudes intellectuelles.

Nous, les parents de l'ARPIOC, invitons au dialogue tous les autres intervenants puisque nous visons à réaliser le même idéal: l'épanouissement de nos membres. Le nouveau conseil arrive à un moment crucial dans l'évolution de la question touchant les droits des minorités francophones. Cependant, il faut avant tout que la population de la capitale nationale éprouve des relations heureuses dans le domaine scolaire, pour le plus grand bénéfice des premiers intéressés, nos enfants. Au terme d'une lutte longue et ardue, nous, les parents, osons espérer que la mise en place du conseil scolaire de langue française de notre région se fera sans heurts et dans le plus grand respect du choix de chacun.

Nous sommes fiers d'être francophones et nous désirons continuer à l'être en assurant à nos enfants l'éducation à laquelle nous sommes en droit de nous attendre de tous les cadres de gouvernement. Nous, parents, avons la grande responsabilité de veiller à ce que nos enfants soient des citoyens à part entière.

Donc, nos recommandations sont: que tout soit mis en oeuvre dans l'établissement du conseil scolaire de langue française, de façon à favoriser l'harmonie entre les partenaires pour le seul bien commun; que le texte de loi donne aux francophones la même qualité d'éducation que l'on donne aux anglophones; que le gouvernement de l'Ontario doive donner un financement qui

permettra l'égalité de services par une mesure intérimaire jusqu'à la mise en oeuvre du rapport Macdonald; et que la Loi contienne les précisions voulues, de façon à garantir non seulement la survie mais aussi le maintien des écoles francophones de la région.

Merci beaucoup.

M. le Président: Merci, Monsieur Gadbois. Richard Allen a une question.

M. Allen: Oui, Monsieur le Président. Merci pour votre mémoire. J'ai pensé au commencement, quand j'ai vu qu'on avait donné la dernière place à votre groupement de parents et d'instituteurs, que c'était dommage. Mais après avoir entendu votre mémoire, c'est un grand plaisir d'avoir un tel mémoire comme mot de la fin de ces deux journées. Nous avons tous un grand respect pour les buts éducatifs que vous avez décrits et, de ma part, je suis absolument dévoué à la vision d'une éducation égale, équivalente et absolument de la meilleure qualité possible pour les enfants franco-ontariens. C'est la base de notre projet de loi et, si c'est possible, nous lutterons fortement pour ces buts éducatifs que vous avez décrits. Merci beaucoup de votre mémoire.

M. Beer: J'aimerais dire aussi que je partage, comme tout le monde, l'opinion que M. Allen vient d'énoncer, et aussi qu'à la fin de nos audiences, nous avons des enfants parmi nous; ça aussi, c'est très important puisque, après tout, c'est la raison pour laquelle nous sommes ici et pour laquelle vous êtes ici, ainsi que toutes les autres délégations qui sont venues nous parler, hier et aujourd'hui.

J'ai posé une question aux représentants qui vous ont précédés, mais juste pour mieux vous comprendre: dans votre association, vous réunissez plusieurs groupements de parents, y compris les parents des écoles séparées et des écoles publiques. C'est ça?

M. Gadbois: C'est ça.

M. Beer: Alors, un des problèmes qui ont été soulevés au cours de nos séances était de savoir comment, à l'intérieur du conseil scolaire francophone, ça va marcher avec une section catholique et une section publique. Je me demande si, en tant que parents, vous parlez de votre collaboration à l'avenir. Pensez-vous que les parents francophones, globalement, envisagent ces changements - avec un tas de financement équitable - que tout le monde a les mêmes opinions sur l'avenir? Ou pensez-vous que certains groupements de parents francophones ont des inquiétudes sur ce que nous sommes en train de faire?

M. Gadbois: Je peux vous donner la réponse en deux parties. Je vais donner la première partie, M^{me} Yamasaki va vous donner la deuxième.

Dernièrement, mardi de cette semaine, nous avons eu le congrès de l'ARPIOC, notre mini-congrès annuel, qui regroupait un représentant de chaque API dans Ottawa-Carleton. Puis une recommandation a été faite pour qu'en septembre, un comité ad hoc soit mis sur pied, justement, pour étudier comment l'Association fonctionnerait à l'intérieur d'un conseil francophone avec un secteur public et un secteur confessionnel. Donc, le comité va se former; le 9 juin, nous avons une réunion avec le Ralliement des associations parents et instituteurs de Carleton, qui nous a précédés. La proposition va être distribuée au RAPIC afin d'avoir un représentant; puis à la suite de cela, il y aura un comité ad hoc pour étudier de quelle façon la représentativité des

parents à l'intérieur d'un mouvement de parents pourrait fonctionner à l'intérieur d'un conseil. Je vais laisser M^{me} Yamasaki vous répondre.

Mme Yamasaki: Je crois que vous savez que nous sommes membres de quatre conseils. Il y a un groupe de parents qui s'est formé, comme Carleton a son RAPIC, Ottawa séparé a un comité de liaison avec les conseillers et il y a un comité de liaison au niveau des écoles publiques d'Ottawa. Alors, chaque groupe de parents ressent le besoin de participer, avec ses conseillers scolaires, pour discuter des choses; puis la régionale a pour but d'essayer de rassembler tout ce monde-là puisque nous avons surtout en commun l'éducation de nos enfants.

Nous sommes conscients des besoins. Maintenant, comme les parents ne sont que des bénévoles, ça devient très fatigant. Nous sommes toujours à courir après quelque chose, mais nous travaillons fort, comme au niveau de la Fédération, qui est partout dans la province. Là, c'est la même chose: s'assurer que chaque coin de la province est représenté et rentrer le contexte actuel d'écoles publiques et d'écoles séparées dans tout ça. Puis on a vraiment l'intention de rester unis, puisque dans le passé on l'a été, de le demeurer et puis de travailler ensemble pour l'éducation des francophones.

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M. Beer: Bon. Alors, on peut dire qu'être parent, c'est de participer aux réunions tout le temps, n'est-ce pas?

Je trouve cela une initiative très importante et je vous en félicite. J'ai l'impression qu'il sera très important aux parents, durant une certaine période de transition, de parler entre eux puisque des questions seront sans doute soulevées, ou peut-être que ce sera même plus facile pour les parents d'aider les conseillers scolaires ou des administrateurs et puisque, après tout, on commence quelque chose de nouveau et il faut absolument avoir la participation des parents côté confessionnel et côté non confessionnel. Alors, c'est la raison de ma question. Merci beaucoup.

Mrs. O'Neill: Yes, I too am very happy with the tone of your brief and I hope you will accept my question as really something that I am asking whether you have considered. I see in what I consider to be your statement of goals or aims and objectives at the bottom of your first page, that you bring in really the education of the whole child, as I understand it, in the separate schools when you talk about religious and moral education.

Mr. Beer, I think, was the one who asked you whether you had members from the public sector, and you said you did, so I am just wondering how you feel that can be dealt with within the school system. It is an exclusive right, obviously. I presume that the public members of your association agree with this statement of goals, aims and objectives.

My question is fairly direct. Do you see there being some kind of religious education within the public section of the board, whether that be world religions or some kind of a morals-value education? I just wonder if you have discussed this. I feel this is an item that has not been looked at very closely by too many, and I presume that maybe you have looked at it. That is why I am asking.

M. Gadbois: Ce que je peux vous mentionner, c'est qu'autour de la table de l'ARPIOC, on respecte le choix de chacun. Lorsqu'on s'assoit et qu'on travaille à un dossier, on le travaille en tant que francophones et non en

tant que catholiques ou non catholiques. Puis je crois que tant et aussi longtemps que nous irons vers le respect de tout le monde autour d'une table et puis que nous travaillons pour la meilleure éducation de l'enfant, la meilleure qualité, vous aurez la plus belle harmonie possible autour d'une table.

Mrs. O'Neill: So you are really suggesting to me that you have not gone to the specifics of how this may be carried out in the schools that would not be Catholic or separate?

Mme Yamasaki: Je dois dire que M. Gadbois a des enfants au niveau élémentaire en ce moment. Alors, quand on rejoint l'école publique, souvent, dans la région, on est habitué à penser surtout aux écoles secondaires. Les écoles secondaires ont toujours offert des cours de valeurs humaines et des cours de valeurs religieuses dans les années passées, étant donné les circonstances que nous connaissons tous, à savoir qu'il n'y avait pas de secondaire francophone dans la région avant il y a quelques années.

Alors, ça c'est fait. Cela recommence à se discuter dans les secteurs publics: quelles choses devront être mises en place? Je vous assure que ce n'est pas une excuse que je me cherche, mais tout nous est tellement tombé sur la tête que les choses ont reculé. Ce sera à la prochaine réunion, puis à la prochaine réunion ce seront les présentations et puis c'est ci, c'est ça. Alors, nous sommes en train de courir après notre souffle.

Mrs. O'Neill: Thank you.

M. le Président: Madame Lafrenière, Madame Yamasaki, Monsieur Gadbois, merci beaucoup. C'était très intéressant.

That is the official end of our hearings here in Ottawa. I thought by way of conclusion, for the record if nothing else, I would like to say that we have, by my count, heard 24 delegations and we have received a number of other written presentations.

These presentations were carefully prepared, and I think they represented a very reasonable cross-section of the very complex community which clearly exists here in Ottawa-Carleton. It was a revelation for me to see just how complex it actually is. I would like to thank all the groups who went to the trouble of preparing material for us.

I would point out that until May 31, which I think is next Tuesday, the committee will receive, as we have mentioned in our advertisements, briefs from any person or organization in the province. We would be delighted to do so. The deadline for such briefs is in fact next Tuesday.

When we are finished here, we will continue with our public hearings at Queen's Park next Monday after routine proceedings, which is approximately 3:30 p.m. As far as we know, those hearings will continue throughout next week.

Our plans are not yet certain, but it looks as though not this month, as one of our members said earlier, but next month, perhaps in two weeks' or three weeks' time, we will proceed to clause-by-clause consideration of this bill. That will likely take us two or three days. So that is the plan. Further public hearings next week; then, if not the week after that, then the week after that, there will be clause-by-clause hearings.

Mr. Campbell: Perhaps before you continue, I have a concern. I have listened very carefully to the deliberations and I am wondering if it is possible that the people here can follow what we are doing in Toronto by the parliamentary channel.

I wish to ask if, first of all, we could have these in the televised committee room so that the people in Ottawa-Carleton, and especially those who are vitally interested in the subject, could follow this on the parliamentary channel in case there are some things they may want to look at and follow the progress of the bill. I am wondering if, through you to the clerk of the committee, this is possible to arrange so that it can be followed.

I have a sense that this is not the end, of course, and I would like to see something that these people can take back to their groups and say, "Stay tuned."

Mr. Chairman: If I can respond to that, it was our intention, if possible, to be in room 151, which is the Amethyst Room, which is where the television facilities are. The only proviso is that that is with the approval of the House leaders. But as far as is possible, through the authority of this committee, that is where we will be.

In that case, to explain it, this means that, for example on Monday, the proceedings will be recorded, and you know they will be repeated at a later time. The same applies each day because the proceedings of the House itself take precedence over the proceedings of a committee. So thank you very much, Sterling Campbell, for that.

I would also like to thank the staff here today from Hansard, the translators and also the ministry staffs, both those who have come from Toronto and those who are here in Ottawa. We greatly appreciate the support which we have received. I think largely thanks to them, these hearings have gone very well.

For my part, I would like to thank the local members—Norm Sterling, Yvonne O'Neill and Dalton McGuinty—for their particular interest in this bill and for the information that they have passed on to us. They have been particularly useful to us all.

I declare these meetings adjourned. We meet again at approximately 3:30 p.m. in the Amethyst Room at Queen's Park.

The committee adjourned at 5:45 p.m.

EXHIBIT No. 1/03/29

FILED ON MAY 26 1988

BILL 109:

**An Act to Establish a French
Language School Board for the
Regional Municipality of
Ottawa-Carleton**

A Brief to

**THE COMMITTEE ON
SOCIAL DEVELOPMENT**

Presented by

**CARLETON ROMAN
CATHOLIC SCHOOL
BOARD:
ENGLISH SECTOR**

Ottawa: May 1988

The Trustees of The Carleton Roman Catholic School Board: English Sector welcome this opportunity to make representation to the Committee on Social Development in respect of Bill 109: An Act to establish a French Language School Board for the Regional Municipality of Ottawa-Carleton.

Briefly, the Carleton Roman Catholic School Board: English Sector encompasses an area of some eleven hundred (1,100) square miles and serves an estimated sixty-five thousand (65,000) "English" Catholic ratepayers, within Cumberland, Gloucester, Goulbourn, Kanata, Nepean, Osgoode, Rideau and West-Carleton. The Board provides a comprehensive range of educational programs and services for seventeen thousand, three hundred and fifty-three (17,353) "English" language students within thirty-two (32) Catholic Elementary and five (5) Catholic Secondary schools, throughout the jurisdiction of the Carleton Roman Catholic School Board.

In this presentation the Carleton Roman Catholic School Board: English Sector wishes to confirm our support for the establishment in a constitutionally valid manner of a French Language Board that would provide to an estimated thirty thousand (30,000) Catholic Francophone ratepayers within this Board's jurisdiction an opportunity to fully govern their own educational affairs without derogating, abrogating or abridging their constitutional and acquired denominational and linguistic rights.

In our representation we seek explicit and comprehensive assurances that the means chosen to attain these ends for our Francophone ratepayers do not in any way do violence to the constitutional and acquired rights of Roman Catholic Separate School supporters in general, which have so recently been re-affirmed.

While we are reasonably confident that the Legislature intends no such prejudicial effect, we are mindful that implicit understandings among those vitally involved on a day-to-day basis in the development of this historic Bill must inexorably fade and become obscured with the passage of time. For this reason we are firmly of the opinion that the legislation must be amended to provide, explicitly and clearly, the necessary constitutional safeguards, which will not only engender broad support for this policy initiative today, but will also enable the Bill to withstand the scrutiny of future generations.

In our brief remarks to the Committee we will not attempt an exhaustive clause-by-clause analysis, rather we will focus on certain major principles and processes. Specifically we wish to address the requirement for constitutional validity; the requirement for equitable financial mechanisms to ensure equality of educational opportunity; and finally we wish to comment on certain specific provisions of the Bill relating to the dispute resolution process and those relating to the transfer of assets and personnel.

The Requirement for Constitutional Validity

The Ontario Court of Appeal, in the 1984 Minority Language Education Rights Reference, stated:

"As we view the Charter, it grants supporters of denominational schools a right in addition to those granted them in 1867 by s. 93. They are now entitled, by virtue of s. 23, to have their children receive denominational education in either the minority or majority language." (p.85)

The Carleton Roman Catholic School Board: English Sector bases its support for the establishment of a French Language School Board in the Regional Municipality of Ottawa-Carleton on this fundamental understanding, viz., that the Section 23 Charter provisions confer "an additional" right upon supporters of denominational schools. Consequently, great care must be taken to ensure that the administrative structures proposed for the implementation of the language rights provided under the Charter comply with the requirements of the Constitutional Act of 1867, and of s. 93 in particular, in respect of denominational schools.

The legislation must be an effective means for the implementation of the language of education rights provided for in the Canadian Charter of Rights and Freedoms without infringing upon the denominational rights of Roman Catholic separate school supporters provided for under the Constitution Act of 1867, specifically s. 93.

We are also mindful that constitutional rights can neither be bargained away nor lost through non-enforcement and that any interested party can at any time instigate litigation which would call into question the constitutionality of this piece of legislation. This fact, we recognize, places a tremendous onus on the members of this Committee to ensure that the legislation, in its final form, satisfactorily addresses the constitutional questions raised.

While we acknowledge that the Carleton Roman Catholic School Board: English Sector may not be as directly affected by the provisions of this Bill as is our Francophone counterpart, the French Language Education Council, we are very directly affected by the constitutional implications for governance of separate schools and by those provisions relating to educational finance, the transfer of property and personnel and the resolution of disputes.

For these reasons, the Carleton Roman Catholic School Board: English Sector wishes to impress upon the Members of the Social Development Committee that, in our view, it is essential that the objects of the proposed legislation be carried out in a constitutionally valid manner and in such a way that equality of educational opportunities is not financially prejudiced.

It is our belief that to attain these ends the Bill must not diminish the degree of control that Catholics may exercise over their denominational schools. In this regard we note that the main thrust of

the Bill is to confer upon the public sector and upon the Roman Catholic sector of the French Language School Board, the management and control of their respective schools. Certain powers are allocated irrevocably to the respective sectors (Section 4 (1) 1-18 incl.), other powers are allocated exclusively to the sectors but may, by agreement of each sector, be delegated to the full Board (Section 4 (1) 19 - 29 incl.), certain powers are within the exclusive jurisdiction of both sectors but require a double majority for their exercise (Section 4(2)); certain other powers are allocated to the exclusive jurisdiction of the full Board.

With respect to the distribution of powers, Section 4 (1) of the Bill allocates most powers to the exclusive jurisdiction of the respective sectors. However, by virtue of Section 4 (2), it would appear that the sector trustees will not have full ownership and control of schools and other facilities since these are to be allocated by means of a majority vote of both sectors and are to be subject to the dispute resolution mechanism provided for in Part XI.

We are concerned that, in its present form, the provision of Section 4 (2) 3 removes from Roman Catholic School Trustees rights of ownership and control over Catholic schools and facilities such that the Bill is open to constitutional challenge. While we understand that there may be administrative reasons in support of the proposed section, in our judgement it would be more appropriate to treat these rights of ownership and control over schools and facilities just

like the other powers allocated exclusively to the respective sectors under paragraph 4 (1) and to do so in such a manner as to allow for their delegation to the full board by agreement. Therefore it would be possible to achieve the same desired administrative objective in a manner that would be less likely to be viewed as diminishing, abrogating or derogating from the powers of Roman Catholic School Trustees.

There is also a question with respect to residual powers. It would appear that the primary objective of the architects of the Bill, as expressed in Section 4 and in paragraph 4 (1) 29 in particular, is to achieve a full enumeration and allocation of powers such that anything not expressly covered will fall to the sectors rather than to the full board. We believe that this is a proper approach and is one which promises the greatest prospect for success from a constitutional standpoint. However, the wording of sections 2, 23 and 49 is such that there may be powers provided for directly or indirectly in the Bill but not mentioned in section 4, which could therefore be outside the scope of paragraph 4 (1) 29 that would remain unallocated and could arguably be seen to reside with the full board.

Canadian legal history is replete with examples of litigation on the question of distribution of powers, consequently we believe that it would be advantageous to specify, either in paragraph 4 (1) 29 or in sections 2, 23 and 49, that all the powers of The Ottawa-Carleton French Language School Board, in whatever manner they are provided for in the Bill itself

or arising from inference or otherwise, are to be distributed according to section 4 so that any residual powers are clearly assigned to the respective sectors.

Perhaps this end could best be achieved by a modification of paragraph 4 (1) 29, since this would require least change and would also be encompassed by the delegation mechanism provided for in section 4 subsections (4) to (9).

With respect to the mechanism provided for the delegation of certain exclusive sectoral powers we wish to emphasize that the important issue, from a constitutional standpoint, is that the Bill not set up a delegation mechanism that would at any time diminish or remove the Roman Catholic Sector Trustees' full range of power and control over the Catholic denominational schools in the Board.

In this regard we note that subsections (6) and (7) of section 4 provide for both a time limitation and a transfer back to the sectors of powers that have been delegated. We note also that subsection (5) provides that the transfer of jurisdiction may be on specific terms, and that such a provision could possibly be considered to enable the Roman Catholic Sector Trustees to safeguard control over certain denominational matters. However, subsections (4) and (5), respectively, provide that a transfer of jurisdiction requires a majority resolution of both sectors, and that a transfer may be subject to any condition "if both resolutions so provide". However it is not at all clear what happens if a condition does not

appear in both resolutions, or if the conditions in both sectoral resolutions are not identical or to the same effect. In other words, in either of the above circumstances, is it the transfer of jurisdiction that does not take place or does the transfer take place but the condition not come into effect? In our opinion it must be made clear in the Bill that the transfer of jurisdiction shall not take place without being subject to the condition.

Reiterating our position that the final form of the Bill must provide explicit guarantees of constitutional and acquired denominational rights, we wish to note the apparent good intentions of the Legislature in incorporating in Section 1 (4) of the Bill the provision of Section 1 (4) of the Education Act. We believe that this limited and indirect provision should be strengthened to provide the constitutional guarantees we seek and that these should be clearly and prominently stated within the Bill. In this regard also we would urge the Committee to incorporate into the Bill, for Third Reading, a "Preamble" as was done for Bill 30, along the following lines:

"Whereas it is desirable to provide for the organization of schools in the Regional Municipality of Ottawa-Carleton so as to foster the exercise of minority French language educational rights in a manner that reflects the particular requirements and circumstances that prevail for Francophones in that Regional Municipality, without abrogating or derogating from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools;

THEREFORE HER MAJESTY, etc. ..."

The inclusion of such a preamble would provide a clear statement of historical purpose, scope and constitutional intent and would allay fears that this legislation is, or may be considered in the future to be, a prototype for school boards in the province without reference to the implementation of the Charter minority language rights. Such an inclusion would appear to be consonant also with the statements of the Minister in the House when the Bill received Second Reading.

The Requirement for Equitable Financial Mechanisms to
Ensure Equality of Educational Opportunity

The Ontario Committee on Taxation (1976), The Mayo Report (1976), The Jackson Report (1978), The MacDonald Commission (1985) and myriad ministry studies have unanimously endorsed the need to overhaul the existing system of educational finance with a view to creating greater fairness.

The members of the Committee may be relieved to hear that we will not provide an exhaustive treatment of the inequities of the current grant plan, today. However we do wish to provide some salient background information in support of our position in respect of Part IX of the Bill relating to Finance.

The promise of full and fair funding has yet to be brought to fruition, for the question of equality of educational opportunity is directly related to disparities in assessment wealth among Boards which persist. The Commission on the Financing of Elementary and Secondary Schools in Ontario is unequivocal on this matter:

"The issue of distribution of the commercial and industrial assessment is not simply the sharing between the public and separate school systems; rather, it is a sharing between the assessment-rich boards and the assessment-poor boards. The current limitations on separate school boards to requisition taxes on commercial and industrial assessment constitute a major cause of these disparities, apart from the geographic locations of the businesses and industries.

Fairness is the key consideration. We sense that there is a sincere desire to provide a fair share of the available resources to each pupil, irrespective of location of residence. Opponents to redistribution do not question the premise of fairness; rather, they oppose the idea from several understandable perspectives. They are concerned about those boards which will stand to lose substantial local revenues if their assessment base is reduced. They are concerned about the technical aspects of alternative approaches. And they are concerned about the risk of direct or indirect provincial levy on this assessment base without the guarantee that the revenues in total will come back to the education system. We acknowledge these potential problems, difficulties, and concerns but feel that they should not obscure the basic goal of fairness."

MacDonald Commission p. 41

The fundamental problem is that the grant mechanisms which are designed to ensure equity are only in operation to the "ceiling" established for ordinary expenditure. However, all Boards in this region, and most Boards provincially, incur expenditures greatly in excess of the ceiling. Consider the following comparison of per pupil expenditures in 1987;

Comparison of Per Pupil Expenditures 1987

	<u>Elementary</u>	Over Ceiling	<u>Secondary</u>	Over Ceiling
OBE	\$4444.74	1594.41	6174.59	2376.52
OSSB	\$3493.59	683.85	5546.28	1759.43
CBE	\$3529.28	756.34	4708.17	1070.88
CRCSSB	\$3023.09	304.16	4202.40	491.96

Adapted from: SCHOOL BOARD ESTIMATES: MOE
SCHOOL BUSINESS AND FINANCE Branch

A Board's ability to generate revenues in excess of the established ceiling, however, is primarily a function of the size of the Board's assessment base. Consider, for example, the relative distribution of the region's commercial and industrial assessment among the Boards in terms of percentage of pupils served.

Comparison of Percentage of Pupil Population to
Percentage of Commercial and Industrial Assessment

	Percentage Enrolment	Percentage C&I Assessment
OBE	29.7	74.0
OSSB	12.7	8.0
CBE	38.4	16.0
CRCSSB	19.2	2.0

Adapted from Feldman Report: OBE
May 1987

As these figures clearly indicate, and as has been confirmed by all major studies, the greatest inequities in educational opportunity result from the significant disparities in the relative abilities of Boards to generate revenue from commercial and industrial assessment.

This fundamental inequality persists despite the fact that it has long been identified;

"The employees of a major industry are not drawn just from the municipality in which the business is located. The cost of educating those employees or their children isn't borne just by the school board in that municipality. And business and industry derive a significant part of their revenues from people in other municipalities. Perhaps then the revenue from that assessment should be pooled, in order to limit these spill-overs of tax incidence and benefit, and shared by all school boards in proportion to need."

Hon. B. Stephenson, former
Minister of Education quoted in
MacDonald Commission Report p.40

In like manner, and for similar reasons, all payments in lieu of taxes should also be equitably shared among Boards.

To echo the sentiments and imagery of the Mayo Report, the time has come to cut the Gordian Knot and to re-create a truly equitable financial system. In this respect, with regard to Part IX of the Bill, we wish to enumerate certain fundamental principles which should guide and inform amendments to the legislation prior to Third Reading.

Firstly, the French Language School Board requires a financial base of support which ensures equality of educational opportunity, as do each of the English Language School Boards which result. As had been pointed out by consecutive Studies and Commissions this question of equality of opportunity and provision

is, at base, driven by the assessment poverty/wealth of the Board. In order to ensure equity it is necessary that there be a pooling and sharing of commercial and industrial assessment and of grants in lieu of taxes within the RMOC, on a per pupil basis. The further fragmentation proposed of an already limited Roman Catholic assessment base upon linguistic grounds will seriously aggravate an already inequitable situation and will have a dramatic and negative effect upon programs and services in both the Roman Catholic Francophone Sector and the resulting English Language Carleton Roman Catholic School Board.

Secondly, we support the proposal for the allocation of start-up grants and certain other extraordinary funds to assist in the establishment of the French Language School Board. However, we also believe that compensatory grant provisions must be made to the English Language Boards for the loss in pupils and assessment, in a manner similar to the per-pupil grants which were provided to the Boards of Education for the purpose of offsetting the costs associated with downsizing which attended the implementation of Bill 30. The outcomes that obtain for the English Language Boards as a result of the implementation of this Bill are precisely the same as those which prevailed as a consequent of the extension of the Separate School System. In justice, and as a matter of evenhandedness, similar compensatory provisions must be made in this instance.

The Dispute Resolution Mechanism and Process

At the outset we wish to state that we are unsure of the precise role contemplated for the Languages of Instruction Commission, acting as a whole or as a select panel, in the resolution of disputes that may arise. Given this uncertainty it would perhaps be wise to proceed by way of questions, the answers to which may provide the clarification we seek.

1. What is the planned composition of the Commission?
2. What guarantees are there of appropriate and proportionate linguistic and denominational representation on the Commission?
3. What guarantees are there of similarly balanced representation on a select panel of the Commission?
4. What is the role contemplated for the Commission? Does it merely receive notices of disputes and appoint mediators and/or arbitrators in those instances where the parties fail to agree on a person? Or, is a more directly interventionist role in the actual resolution of disputes planned?
5. Why is it that in disputes, other than inter-sectoral disputes, matters may only be referred to the Commission by the French Language Board and not equally by another party to a dispute?
6. Why is the application of the Arbitrations Act specifically excluded from a process which culminates in arbitration?

We note the intention of the sections, as written, to provide specific deadlines for the various steps in the dispute resolution process. We wish to point out, from our experience under the Bill 30 provisions, that the provision of strict and mandatory deadlines is an absolutely essential requirement for an effective dispute resolution process.

The Transfer of Buildings and Assets

Subject to our earlier remarks on the questions of rights of ownership in relation to the constitutionality of the Bill, we foresee no difficulty in the transfer of those assets and liabilities pertaining to real property currently in use as "French Language Instructional Units", as defined in Part XI of the Education Act, to the Roman Catholic Sector Trustees of the French Language School Board.

We would note that the meaning of Section 61 (1) should be clarified by the substitution of the words "as a" for the word "by" in the second line. If this change is not made, in the case of an undercapitalized Carleton Roman Catholic School Board, it could result in an allocation formula which as a first step would assign to the French Language School Board assets other than functioning French language schools which assignment would have the effect of not leaving enough assets centrally with which to meet the requirements of section 62 of the Bill.

This requested change reflects the intent expressed in the explanatory note to Part XII. Internal discussions within the Carleton Roman Catholic School Board to this point in time indicate that we would have no difficulty in reaching agreement given this clarification and clearly it would be preferable if the law reflected the intent. We are confident also that such a change would avoid the possibility of future

misunderstandings between the parties as negotiations proceed and would be of assistance also to any third party who may be required to resolve a dispute at some future date.

We would bring to your attention a technical detail arising from the use of the word 'debt' in Section 61 (5). The definition of 'debt charge' outlined in section 1 (1) 13 of the Education Act does not include the unfinanced portion of current capital projects which a Board may have elected to finance by a debenture which had yet to be finalized by January 31, 1988. We believe that this matter can be clarified and resolved by resorting instead to the language of the B Memoranda (Financial/Architectural: No. 7; 1982) which would encompass such interim financial arrangements.

The area of potential difficulty and dispute, given that the Carleton Roman Catholic School Board is such a highly under-capitalized Board, is the determination of what constitutes an equitable share of those few tangible assets which would remain after the transfer of functioning French language schools. We are confident that the Legislature does not wish to create a situation where the English Language Carleton Roman Catholic School Board would have to assume an additional and new financial liability and/or an increased debt load as a consequence.

Fundamentally, at this juncture we are missing a piece of the puzzle because we do not know the extent of the Government's own financial commitment to the success of this historic policy initiative. We seek assurances that Catholic English language ratepayers and students under the jurisdiction of the Carleton Roman Catholic School Board will not be made poorer in the process and that due consideration will also be given to their facility requirements.

The Transfer of Staff

It is our understanding that all employees who are currently in the exclusive service of the French Language Education Council of the Carleton Roman Catholic School Board will transfer to the employment of the French Language School Board under the jurisdiction of the Roman Catholic Sector and that necessary arrangements are to be effected for their assignment for the transitional period to August 31, 1989.

Furthermore, it is also our understanding that other "central" staff who may be displaced as a result of the establishment of the French Language School Board are to be identified by each Board and their transfer effected by means of agreements among all five (5) Boards in consideration of the needs of the French Language School Board for personnel. Perhaps greater clarity could be provided as to the respective role and responsibility of each English Language Board and of the French Language School Board in section 66 (1); it is our view that section 66 (1) (a) should be the responsibility of each English Language Board, severally; and, that section 66 (1) (b) should be the responsibility of the French Language School Board, although the Bill appears to provide otherwise.

Section 66 should be amended to capture these responsibilities. In respect of section 66 (2) we would request clarification of the intent; are such agreements to be arrived at bilaterally or is one multilateral comprehensive master agreement between all five (5) boards the intended outcome?

As indicated in our earlier response to the Consultation document we again wish to state that while it seems entirely appropriate to provide a "right of first refusal" to those "central services" employees who may be displaced as a consequence of the establishment of the French Language School Board, and while it also seems appropriate to make such provision for designated exclusively French sector staff in those Boards which have a single unified collective agreement and seniority list, it appears to us to be entirely inappropriate to extend this provision to designated exclusively French sector teaching staff in those instances where distinct collective agreements and seniority lists exist for French and English teaching staff of a Board presently. To do so is to confer an additional and new benefit on the members of the transferring Francophone group at the expense of the remaining Anglophone group.

The Carleton Roman Catholic School Board: English Sector believes that either a correction or clarification must be provided with regard to the financial responsibility for retirement gratuities under Section 73 of the Bill. In our view, fairness dictates that the unfunded liability attendant upon the "staff asset" transferring or remaining should be treated in a manner similar to that proposed for the transfer of capital assets and liabilities. In other words, the English language Board should not be required to shoulder the entire responsibility for past service when a portion of the supporting tax base and assets are being transferred away. Consequently, the responsibilities should be assigned exclusively to the

French Language School Board for those staff who are in the service of the French Language Instructional units exclusively, and to the remaining English Language Board for those staff who are in the service of the English Language instructional units exclusively. In like manner, the liability in respect of those staff who serve both sectors should be actuarially determined, on a pro-rata basis, and the appropriate sector reimbursed/credited in the general process of an equitable division of unassigned assets.

The current provisions of the Bill must be amended so as to ensure an equitable assignment of this unfunded liability to each of the parties.

We are not presently in a position to give a more comprehensive analysis of the impact of the provisions for the transfer of personnel as we are not yet aware of the planned organizational and administrative structure of the French Language School Board. However, we do anticipate that we will experience a disproportionate increase in administration costs as a result and, as we have argued earlier, compensatory financial provisions must be established to account for this feature.

In closing, Mr. Chairman, and Members of the Social Development Committee, on behalf of the Carleton Roman Catholic School Board: English Sector I wish to express appreciation for the opportunity provided to respond to this historical piece of legislation.

We are cognizant of the critical role that the members of this Committee play at this stage in the development and preparation of legislation for the consideration of the House on Third and Final Reading. We trust that our intervention may be of assistance to you, individually and collectively, in the successful completion of your onerous task.

It is our earnest hope that the legislation, in its final form, will reflect careful consideration of those constitutional and administrative concerns which we have addressed to you in such a manner that the final Bill will warrant our wholehearted support, not only in principle, but also in the effective implementation of the policy. On behalf of the Board,

C.B. MacDonald
Chairman
Carleton Roman Catholic School Board:
English Sector

Mémoire au

*Devered
read*

Comité permanent des
affaires sociales de
l'Assemblée législative

sur le

Projet de loi 109

**Conseil de l'enseignement
en langue française**

Le 26 mai 1988



Ottawa
Board of
Education

Conseil
scolaire
d'Ottawa

Le 11 avril 1988, Monsieur Chris Ward, ministre de l'Éducation, présentait à l'Assemblée législative un projet de loi pour la création d'un Conseil scolaire de langue française dans la municipalité régionale d'Ottawa-Carleton.

Le CELF du Conseil scolaire d'Ottawa continue d'appuyer la mise en place d'un tel conseil, mais tel qu'il l'a exprimé dans ses réactions préliminaires du 22 mars 1988, cet appui est donné sous réserve du maintien des principes de base suivants:

- i) Une conception globale de l'éducation qui réponde à tous les besoins de la population et serve toutes les tranches d'âge (éducation permanente, éducation des adultes, récupération des décrocheurs, alphabétisation, intégration linguistique et culturelle des néo-Canadiens, cours de perfectionnement, de recyclage, de développement individuel et communautaire).
- ii) Le droit de la population francophone au choix entre une éducation confessionnelle ou non-confessionnelle.
- iii) La mise en place de structures qui assureront sans équivoque, sinon l'amélioration, du moins le maintien de la qualité des services déjà en place.
- iv) Une définition précise du financement requis, pour maintenir le niveau de qualité déjà atteint dans les sections publiques existantes.

Nous croyons que le projet de loi tel que conçu présente un engagement de la part du gouvernement à reconnaître ces principes de base et à respecter également le jugement de la cour d'appel de l'Ontario au 26 juin 1984 qui stipule que "the quality of Education to be provided to the minority is to be on the basis of equality with the majority".

Par contre, selon les informations à notre disposition, nous maintenons de sérieuses réserves sur certains articles du projet de loi. Aussi, plutôt que d'analyser article par article le projet de loi de façon exhaustive, nous préciserons notre position sur certains des principes de base énoncés dans des articles du projet de loi.

Afin de faciliter la discussion, les commentaires présentés suivront les parties du projet de loi.

1. Définition de "francophone"

Article 1 (1)

Ouverte sur le monde, l'École publique française du Conseil scolaire d'Ottawa accueille tous les élèves d'où qu'ils viennent: de l'Ontario, d'autres provinces, d'autres pays. Par la pluralité des idées qu'elle véhicule, par l'intégration linguistique et culturelle des néo-Canadiens, l'École publique offre un milieu représentatif de la société canadienne d'aujourd'hui.

Telle que présentée, la définition de francophone va à l'encontre de cette réalité. Elle est restrictive puisqu'elle ne permet ni à un citoyen canadien ni à un immigrant reçu dont la langue maternelle est autre que le français ou l'anglais d'accorder son appui au Conseil de langue française. Ceci est particulièrement vrai pour les personnes n'ayant pas d'enfant d'âge scolaire.

La définition ne permet pas non plus aux nouveaux arrivants qui ne parlent ni l'anglais ni le français et qui ne maîtrisent pas encore une des langues officielles du Canada de choisir librement d'appuyer le Conseil de langue française.

Nous ne pouvons accepter un Conseil de langue française qui nous place au rang de Conseil de second rang dans la région d'Ottawa-Carleton quant à la participation des néo-Canadiens au processus électoral tant à titre d'électeurs qu'à titre de candidats, ainsi qu'à leur participation concrète, selon leur libre choix, comme contribuables au Conseil de langue française.

Nous recommandons:

que cette définition soit modifiée et dans la Loi sur l'Éducation et dans le projet de loi 109 afin d'y inclure les catégories de personnes identifiées ci-dessus.

2. Les exigences constitutionnelles

Partie I

Nous reconnaissons que le gouvernement a examiné et étudié minutieusement les implications constitutionnelles de ce projet de loi. Il nous semble que le le projet de loi tel que conçu respecte les exigences constitutionnelles.

Par contre, compte tenu de l'opposition manifestée ouvertement par certains groupes, nous croyons qu'il est important de faire vérifier aussi tôt que possible par la Cour, la constitutionnalité du projet avant même l'entrée en vigueur de la loi.

Il serait en effet très regrettable qu'une fois établi une décision subséquente de la Cour vienne mettre en péril l'existence même du Conseil. Nous ne pouvons engager notre communauté scolaire publique dans une restructuration des services et programmes disponibles en ce moment, sans être assurés au départ de la stabilité du projet. L'avenir des élèves francophones de la région déjà soumis à plusieurs changements pendant les deux dernières années, doit désormais être établi de façon stable.

Nous recommandons:

que le gouvernement de la province réfère le projet de loi immédiatement après avoir reçu la sanction royale, aux tribunaux pour jugement sur sa constitutionnalité, et que la loi ne soit pas mise en vigueur avant que le jugement final ait été rendu.

Une telle démarche a certes un impact important sur la gestion des modules de langue française existants pendant cette période de référence constitutionnelle. Aussi des dispositions transitoires devront être prévues.

Nous recommandons:

Que pour 1988 l'on procède à l'élection de membres de la section de langue française au sein des conseils existants (CELF) conformément aux dispositions prévues par la Loi 75.

Il s'en suit que pendant la période transitoire les sections de langue française des conseils existants continueront à être gérées selon les dispositions prévues à la Partie XI-A de la loi scolaire. Le mandat de ces conseillers durera jusqu'à ce que la loi sur l'établissement d'un conseil de langue française sera mise en vigueur.

3. Le financement

Partie XI

Le financement non précisé dans le projet de loi rend impossible, à notre point de vue, le maintien au sein du Conseil de langue française de la qualité, de la variété et de la diversification exceptionnelles des services et programmes actuellement offerts aux élèves francophones de la section publique au sein du Conseil scolaire d'Ottawa.

Le maintien de la diversité des programmes et services en place exige pour le Conseil de langue française des revenus importants. Cette exigence est encore plus apparente pour la section publique. Au sein du Conseil scolaire d'Ottawa nos jeunes francophones bénéficient au même titre que leurs confrères de langue anglaise d'une dépense per capita et d'un maintien de rapport maître-élèves parmi les plus favorables de la région.

Le projet de loi propose un financement provisoire et nous respectons l'engagement du gouvernement d'assurer des ressources financières suffisantes pour maintenir la qualité des programmes et services dont bénéficient actuellement les élèves. Nous ne pouvons pas nous engager à fond dans la mise en oeuvre d'un conseil de langue française à moins que des garanties précises de financement égal à celui reçu jusqu'à présent, soient incluses dans la législation.

Nous recommandons:

que des garanties précises de financement égal à celui reçu jusqu'à présent, soient incluses dans la législation et que ces garanties tiennent compte des éléments suivants:

- reconnaître la nécessité de subventions spéciales de départ; les besoins du nouveau conseil en matières par exemple de l'établissement d'un édifice administratif, de la mise en commun des services administratifs, des services pédagogiques et des services à l'élève;
- permettre à chaque section et au Conseil plénier d'offrir des services équivalents à ceux disponibles aux élèves anglophones;
- ne créer aucune diminution des services et programmes offerts aux francophones;
- tenir compte des dépenses additionnelles entraînées par la structure de deux sections;
- reconnaître l'apport actuel des revenus générés par les taxes commerciales et industrielles.

4. Le transfert des biens

Partie XII

Le CELF du Conseil scolaire d'Ottawa est satisfait de l'approche proposée. En effet elle reconnaît le principe de l'élaboration d'ententes équitables conclues entre les différents intervenants.

Le CELF relève quand même trois difficultés qui rendent inacceptable la mise en vigueur de cette partie de la loi.

La section 62(9) prévoit la possibilité que le Conseil plénier du Conseil scolaire de langue française puisse remettre en question les ententes préalablement conclues entre les parties. Nous nous objectons vigoureusement à ce que des ententes conclues de bonne foi suite à des négociations entre les membres des CELF et les autres membres d'un même conseil soient remises en question. Si d'une part on confère aux membres présentement élus le devoir et la responsabilité de négocier ces ententes il est d'autre part raisonnable de croire qu'on respectera leur intégrité et celle des ententes qu'ils concluront.

Nous recommandons:

que la partie 62(9) soit abrogée.

La section 62(3) établit un certain nombre de facteurs pouvant guider le Conseil de langue anglaise dans le choix des biens et des réserves à transférer. Si le projet de loi insiste à identifier un facteur nous croyons que cette section devrait être élaborée davantage pour prendre en considération tous les autres facteurs importants. Nous croyons plutôt qu'il soit préférable de laisser aux parties en cause de négocier de bonne foi et d'établir elles mêmes les facteurs qu'elles jugent appropriés et équitables.

Nous recommandons:

que la partie 62(3) soit abrogée.

La section 61(2) telle que formulée présente des difficultés particulières quant à son application au sein du Conseil scolaire d'Ottawa dans le cas de l'École secondaire Belcourt. Nous n'avons pas d'objections à l'approche générale de l'article. Plutôt nous désirons porter à votre attention une situation particulière existant présentement au sein de notre conseil, situation que vous retrouverez explicitée davantage dans la présentation du Conseil scolaire d'Ottawa.

Compte tenu des ententes déjà conclues par notre conseil sur le parachèvement et sur le transfert des biens au Conseil de langue française nous croyons qu'il est important de reconnaître clairement l'exclusion du site connu sous le nom d'École secondaire Belcourt, de tout processus de transfert obligatoire.

Nous recommandons:

que la loi soit modifiée de telle sorte à reconnaître les ententes déjà conclues.

CONCLUSION

Les membres du CELF désirent remercier les membres du Comité de l'intérêt qu'ils apportent à ce dossier.

Le CELF du Conseil scolaire d'Ottawa reconnaît que cet événement historique, le projet de loi 109, marque l'aboutissement des aspirations des francophones à la pleine gestion de leurs écoles. Nous continuons à appuyer l'intention du projet de loi, mais nous sommes d'avis que des amendements visant à préciser et à modifier certains articles doivent être apportés avant la mise en vigueur de la loi.

En terminant permettez-nous de réitérer l'importance des commentaires exprimés sur les exigences constitutionnelles et le financement. Notre communauté scolaire demeure exigeante sur ces recommandations et refuse de souscrire d'une façon positive à la mise en vigueur de la loi tant et aussi longtemps que ces questions demeureront en litige.

Le 26 mai 1988

On April 11, 1988, Mr. Chris Ward, Minister of Education, presented a bill to the Ontario Legislature for the establishment of a French-Language school board in the Regional Municipality of Ottawa-Carleton.

The FLEC of the Ottawa Board of Education continues to support the establishment of a French-Language school board, but, as explained in its preliminary response of March 22, 1988, this support is based on adherence to the following fundamental principles:

- i) A global philosophy of education which meets all the needs of the population and serves every age group (continuing education, adult education, retention of drop-outs, literacy, linguistic and cultural integration of New Canadians, upgrading courses, refresher courses, personal interest and community courses);
- ii) The right of the French-speaking population to choose between a denominational or non-denominational system of education;
- iii) The provision of mechanisms which will unequivocally ensure that the quality of existing services will be maintained, if not improved.
- iv) A specific determination of the funding needed to maintain the quality of education already provided in the public school sections.

We believe that the bill as presented represents the government's commitment to recognize these fundamental principles as well as to respect the Ontario Court of Appeal's decision of June 26, 1984, which stipulates that "the quality of education to be provided to the minority is to be on the basis of equality with the majority".

Nevertheless, based on the information at our disposal, we still maintain serious reservations with regard to certain articles of the bill. Rather than providing an exhaustive analysis of each article of the bill, we will define our position on some of the basic principles stated in sections of the bill.

In order to facilitate the discussion, the comments submitted follow the sections of the bill concerned.

1. Definition of "Francophone"

Article (1)

Open to the world, the French-Language public schools of the Ottawa Board of Education welcome students whatever their place of origin: Ontario, other provinces or other countries. Through the pluralism, and the linguistic and cultural integration of new Canadians they allow, public schools provide a setting which is reflective of modern Canadian society.

As presented, the definition of Francophone ignores this reality. It is restrictive, since it allows neither Canadian citizens nor landed immigrants whose mother tongue is neither French nor English to support the French-Language board. This is particularly true for persons without school-aged children.

This definition furthermore does not allow new immigrants who speak neither French nor English and who are not yet fully proficient in one of the official languages of Canada to freely choose to support the French-Language School board.

We cannot accept a French-Language school board that is a second-class board in the Ottawa-Carleton region with regard to the participation of New Canadians in the electoral process both as electors and as candidates, and with regard to their concrete and freely chosen participation as supporters of the French-Language board.

We recommend:

that this definition be modified, both in the Education Act and in Bill 109, so as to include the categories of persons identified above.

2. Constitutional Requirements

Part I

We recognize that the government has closely examined and studied the constitutional implications provisions of this bill. It appears to us that the bill as submitted satisfies constitutional requirements.

However, considering the opposition which certain groups have expressed openly, we feel it is important that the constitutionality of this bill be verified by the Courts as soon as possible even before the bill comes into effect.

Once this is verified, it would indeed be most regrettable to see the Courts subsequently issue a ruling calling into question the very existence of the Board. And we cannot, at this time, involve our public school community in a reorganization of the programmes and services presently available without first insuring the validity of the project. The future of French-Language students in our region must be from now on permanently settled, the last two years having already subjected them to several changes.

We recommend:

that the provincial government, immediately after receiving royal assent, refer the Bill to the Court for a ruling on its constitutionality and that the Bill not be implemented before a final ruling has been given.

Such a move would indeed have considerable impact on the governance of existing French-language units for this period of constitutional reference. Interim measures will therefore be necessary.

We recommend:

that for 1988, the French-language section members be elected in each existing board (FLEC), according to the provisions of Bill 75.

As a result, during this transitional period, the French-language sections of the existing boards will continue to be governed in accordance with provisions of Part XI-A of the Education Act. The trustees' term will end with the implementation of the French-language board.

3. Funding

Part XI

As the Bill remains silent on the specifics of the proposed method of funding, we feel it will be impossible to maintain, in the French-language board, the exceptional quality, range and variety of services and programmes presently offered by the Ottawa Board of Education to the French-language students of its public section.

To preserve the range and variety of existing programmes, the French-language Board needs considerable revenues. This requirement is even more obvious for the public section. Within the Ottawa Board of Education our young French-language students benefit on the same basis as their English-language peers from one of the most favorable per capita expenditure and teacher/student ratio within the region.

The Bill suggests an interim funding and we respect the government's commitment to provide enough funding to maintain the quality of programmes and services presently available to the students. But we cannot fully commit ourselves to the implementation of a French-language board if the Bill does not include specific guarantees for funding which is equal to that received up to now.

We recommend:

that specific guarantees for a funding equal to the one received so far be included in the Bill and that these guarantees take into consideration the following requirements:

- recognize the need for special start-up funds; to meet the needs of the new board in areas for example of the establishment of a head office of centralized financial services, programme and student services;
- make it possible for each section and for the full Board to provide services equivalent to those available to English-language students;
- ensure that there would not be any reduction in services and programmes available to French-language students;
- provide for the additional expenses incurred by a two-section structure;
- recognize the present amount of revenue coming from commercial and industrial assessment.

4. The transfer of assets

Part XII

The FLEC of the Ottawa Board of Education is satisfied with the proposed approach, which recognizes the principle of equitable agreements concluded between the various parties.

However, the FLEC finds three problems which make implementation of this section of the Bill unacceptable.

Article 62(9) provides for the possibility that the full French-language Board may challenge the agreements previously concluded between the parties. We strongly object to having agreements challenged which had been signed in good faith after negotiations between FLEC members and other members of the same Board. If, on the one hand, presently elected members are given the responsibility of negotiating these agreements, it is reasonable to expect that their integrity and the integrity of the agreements negotiated will be respected.

We recommend:

that article 62(9) be deleted.

Article 62(3) lists a number of factors which could help the English-language Board in selecting assets and reserves to be transferred. If the bill insists on identifying any factor, we believe that it should also take all other important factors into consideration. But we really feel that it would be preferable to let the parties concerned negotiate in good faith and choose for themselves the factors they deem appropriate and equitable.

We recommend:

that Article 62(3) be deleted.

In its present wording, the implementation of article 61(2) would create special difficulties within the OBE with regards the site known as Ecole secondaire Belcourt. We do not object to the general approach of the article. We rather wish to bring to your attention a particular situation which presently exists in our Board and which is explained in further detail in the Ottawa Board of Education presentation. We fully support the position outlined in the brief submitted by our Board.

In view of the agreements already concluded by our board on the extension of funding, and on the transfer of assets to the French-language Board, we feel it is important to acknowledge clearly that the site known as Ecole secondaire Belcourt be excluded from any compulsory transfer process.

We recommend:

that the Bill be modified so as to recognize agreements previously concluded.

Conclusion

The members of the FLEC wish to thank the members of the Committee for the interest they have shown in this matter.

The FLEC of the Ottawa Board of Education recognizes that the historical event of Bill 109 represents the final realization of the aspirations of Francophones to the full governance of their schools. We continue to support the intention of this Bill, but at the same time we feel that amendments must be made to clarify and modify specific articles of this bill before it is enacted.

In conclusion, allow us to emphasize once again the importance of the comments we have made concerning constitutional requirements and funding. Our school community remains adamant on these recommendations and refuses to support the implementation of this Bill as long as these issues remain unresolved.

May 26, 1988

Translation

88-05-19

BILL 109

BRIEF PRESENTED TO
THE ONTARIO LEGISLATIVE ASSEMBLY

SUBMITTED BY
THE OTTAWA-CARLETON FRENCH-LANGUAGE
EDUCATION PLANNING COMMITTEE

NOTES

on the Ottawa-Carleton French-Language
Education Planning Committee

The Ottawa-Carleton French-Language Education Planning Committee was struck by an Order in Council on January 28, 1988 to work towards the implementation of the French-Language School Board in Ottawa-Carleton. Its membership includes, in addition to a Chairperson and an Executive Director, the 21 Francophone trustees on the four present school boards having jurisdiction in the Ottawa-Carleton region.

By virtue of its mandate and membership, and following the discussions it has held and the studies it has performed, the Committee is the prime mover of the new School Board. It is also the most interested in ensuring that the new Board operates efficiently. Finally, its membership makes it in a way the spokesperson of the Ottawa-Carleton Francophone educational community.

COMMITTEE MEMBERSHIP

Chairperson

Jean Comtois

Executive Director

Maurice Lapointe

Members

Yvan Albert
Gaétan Beauchamp
Robert Beauchemin
Fernand Bégin
Robert Bélanger
Florian Carrière
André Champagne
Jean-Guy Châtelain
Robert Chénier
Hervé Cyr
Lucien Dagenais
Jacques Domey
Marie-Thérèse Fortier
Carmen Gervais
Yvon Goulet
Diane Labrosse
Jocelyne Ladouceur
Rodrigue Landriault
René Lefebvre
Gérard Lévesque
Gérald Quesnel

Resource Persons

Norman Collette, O.B.E.
Gérard Huneault, C.B.E.
Pierre Marcil, O.R.C.S.S.B.
Robert Pilon, C.R.C.S.S.B.

N O T E

The positions presented in this brief derive either from documents approved by the Ottawa-Carleton French-Language Education Planning Committee at its regular meeting of May 5, 1988, copies of which are appended and filed with the Social Development Committee, or from discussions with the chairpersons of the different groups represented at the Planning Committee as agreed upon at the May 5 meeting.

The majority of members of the Planning Committee endorse the document. The representatives of the French-Language Education Committee (F.L.E.C.) of the Carleton Board of Education have however notified the Chairperson that they do not endorse this brief.

INTRODUCTION

The Committee supports the overall intent of Bill 109. The Bill is in its view a historical measure granting Francophones the right to govern their local educational institutions. The structure suggested in the Bill meets the expectations of the Ottawa-Carleton French-speaking community.

This brief is not a clause-by-clause commentary on Bill 109. The officials of the Committee had opportunity to respond and make suggestions throughout the drafting of the Bill. The presence of Ministry of Education officials at Committee discussions and their participation in the studies have greatly facilitated this undertaking. Clause-by-clause consideration should of course continue; the Committee asks that it be kept informed of the results so that the intent of the various clauses of the Bill may be understood by all.

This brief should be seen rather as a commentary on certain principles, policies and basic procedures which are found in Bill 109. Recommendations and suggestions made in the brief follow the same order as the Bill itself.

INTERPRETATION

Section 1: Definition of a "French-speaking person"

This definition is restrictive inasmuch as it allows neither a Canadian citizen nor a landed immigrant whose mother tongue is other than English or French but whose first Canadian official language is French to support the French-language school board. This applies especially to people without school-age children. Such persons may wish to join the French-speaking community or even feel that they are already members of this community.

The Committee therefore recommends

that the Education Act and Bill 109 be amended to include in the definition of a "French-speaking person", in addition to persons qualifying under section 23 of the Canadian Charter of Rights and Freedoms, any person whose first Canadian official language is French.

PART I

Subsections 3(3) and 3(4)

The Committee is aware of concerns due to a perception that the rights guaranteed by Section 93 of the BNA Act and reaffirmed in Section 15 of the Canadian Charter of Rights and Freedoms might be in jeopardy.

The Committee is of the opinion however that Bill 109:

- . has no negative impact on such rights, and
- . allows Francophones to become associated in order to better exercise their rights under Section 23 of the Charter of Rights and Freedoms and their right to governance as recognized by the Ontario Court of Appeals in 1984.

However, in order to clarify the wording and to actually recognize those sections as they are,

the Committee recommends

that subsections 3(3) and 3(4) be amended to read "The public (Roman Catholic) sector shall be the French-language Board when it governs the public (Roman Catholic) schools and classes ..." instead of "The public (Roman Catholic) sector shall govern for the French-language Board the public (Roman Catholic) schools and classes ...".

PART II

Subsection 4(1)

This subsection lists the matters under the exclusive jurisdiction of each sector. The Committee agrees with the principle granting the sectors exclusive jurisdiction over matters defined in paragraphs 1 to 29.

The Committee is in agreement also with the procedure for placing certain matters partly or completely under common jurisdiction and with the possibility of imposing conditions. Those subsections together add guarantees which the Committee supports.

It must not be forgotten however that, while respecting acquired rights, Francophones intend to collaborate in the attainment of common objectives. In this regard, the list of items which may be placed under common jurisdiction (paragraphs 1 to 18) should be restricted to those matters which are essentially tied in with constitutional rights. While it is important, indeed essential to respect such rights, it is important also to provide for cooperation where this will not infringe upon acquired rights and to recognize that the trustees are empowered to govern their own affairs. As a matter of fact, there are already local agreements in effect placing certain special education services under the aegis of a given Board.

Now,

paragraph 4(1)4 specifies that not only the selection but also the provision of instructional and learning materials are irrevocably exclusive;

paragraph 4(1)5, dealing with trainable retarded children and vocational courses, does not reflect the actual situation of the French-speaking minority in the region and could prevent necessary and financially advisable cooperation from taking place;

paragraph 4(1)17 on professional development is very wide-ranging, indeed vague; even now some development programs are offered jointly.

The Committee recommends

that paragraphs 4, 5 and 17 of subsection 4(1) be placed after paragraph 18 and that the paragraphs be renumbered accordingly.

PART IV

Subsection 17(2)

This clause seems to deal much more with joint ownerships than with shared rights (multiple owners).

By its wording, it treats the Francophone minority as a second-class group. While the present Act gives precedence to the public system where there is no religious or denominational unanimity, the Act does not provide any such precedence in the matter of languages. Now, subsection 17(2), paragraph 5 of Bill 109, based on some unknown consideration, gives precedence to the Anglophone group.

There may be no easy way out of this dilemma, but the Committee wishes to make the members of the Legislative Assembly aware that there are cases where a minority group is dealt with in such a manner because of the way a statute is worded.

The Committee recommends

that steps be taken to amend existing legislation so as to allow persons owning or leasing property jointly to split their school support;

that in the meantime, the marginally note beside subsection 17(2) specify clearly that this subsection deals with jointly owned property rather than properties with multiple owners.

PART VIII

Subsection 35(6), paragraph 3

The small number of Francophone in certain area municipalities and the resulting low electoral quotient of each of those groups require that they be combined for purposes of trustee distribution. Such combinations should take into account certain geographic and sociological characteristics of the French-speaking population such as schools attended, community life, etc. Now, Bill 109 provides for combining municipalities or electoral zones within a municipality, but not for combining a municipality or one of its zones with one or more electoral zones in an adjoining municipality. More flexibility would be desirable, indeed necessary for Francophones. This is in fact permitted to the Ottawa Board of Education, which combines the Village of Rockcliffe Park with By-Rideau ward for its Anglophone population.

The Committee has studied trustee distribution on the basis of the French-speaking population of the various municipalities and electoral zones. This study shows that such flexibility is needed. In fact, Bill 75 recognized this need and gave Francophones all the necessary flexibility in this regard.

The Committee recommends.

that subsection 35(6), paragraph 3 be amended to provide for combining a municipality or one or more of its zones with one or more electoral zones in an adjoining municipality.

PART IX

Subsection 48(3)

The Ottawa-Carleton French-Language Education Planning Committee has insisted from the very first that the funding of the new Board make it possible to provide Francophone students with the same quality of education as the Anglophones in the region.

To attain this objective, full access to the industrial and commercial assessment, based on the number of students under the jurisdiction of each Board, must be realized. This remains our basic recommendation for the immediate and foreseeable future.

The Government intends to deal with this question at the same time as the overall funding of education in the province. In the meantime, it suggests interim measures.

It is the view of the Committee that the interim measures be such

- that the two sectors and the full Board may be able to offer services equivalent to those available to Anglophone students;
- that services offered to Francophones are not decreased;
- that there be no difference in the financial ability of the two sectors of the Board to offer services (i.e. one sector being better off than the other);
- that additional expenditures caused by the two-sector structure are recognized;
- that the need for special start-up grants, due to the fact that the French-language Board is breaking away from the existing Boards, which will remain in existence, is recognized.

The Committee wishes to refer also to the Ontario Court of Appeals ruling of June 26, 1984, to the effect that

"the quality of education to be provided to the minority is to be on the basis of equality with the majority."

This judgement was also confirmed by Judge Sirois in the Marchand against the Queen case rendered July 22, 1986.

In that regard, the reference to interim measures in subsection 48(3) should be more specific and include guarantees concerning the duration and level of the temporary grants.

The Committee recommends

that subsection 48(3) be amended to read as follows: "The Lieutenant Governor in Council shall provide for the payment to the public sector, to the Roman Catholic sector or to both of such special temporary grants as are required for Francophone pupils to receive services equivalent to those offered to Anglophone pupils.";

that a paragraph be added to guarantee that such measures will remain in effect until the funding of education has been reformed in such a manner as to provide such equality;

that a subsection be added to clarify the distinction between start-up grants and interim measures whose objectives are to assure equality of services.

PART XII

Subsections 61(9) and 62(3)

The Committee is in agreement with the overall approach to the transfer of school buildings initially, and of other assets under the terms of an equitable agreement in this regard.

For such an agreement to be equitable, the parties concerned will of course have to take into account a number of factors: the past contribution of Francophones to each Board, recent developments, the needs of the French-language School Board, the proportion of students transferred, etc. It will be up to the parties to determine which of those factors have bearing on their situation.

If the Bill is to set out one factor, it must not be limited to one as in subsection 62(3); it should include them all. An alternative would be to leave that consideration to the parties involved.

The Committee recommends

that subsection 61(3) be amended to read as follows: "Subject to subsection (2) and to any agreement signed by two or more existing school boards ...";

that subsection 62(3) be deleted.

PART XIII

Subsection 66(1)

It is the view of the Committee that agreements must be entered into by the present Boards and the French-language Board regarding the number of employees to be transferred from each existing Board, the selection of those employees, and the transfer procedure. One of the documents filed as an appendix to this brief illustrates the extent of the discussions that have already taken place with respect to this question.

The Committee is of the opinion however that the number of employees required by the French-language Board must be determined by that Board alone (see subsection 66(1), paragraph b).

The Committee recommends

that subsection 66(1) be reworded so as to recognize this right and duty of the French-language Board to determine the number of its employees and so as to state the need for an agreement on the other points.

GENERAL COMMENT

The members of the Ottawa-Carleton French-Language Education Planning Committee suggest that any doubt concerning the constitutionality of the Bill be clarified as soon as possible. The members of the Committee have no objections to the suggestion that the government verify this constitutionality in court.

CONCLUSION

In concluding, the Committee wishes to thank the members of the Legislative Assembly for the support they gave this Bill in second reading. The Committee is of the opinion that, with changes to clarify the intent or wording of certain clauses, Bill 109 could be a historical item of legislation for Ontario Francophones.

A P P E N D I X "A"

Recommendations

The Committee recommends

1. that the Education Act and Bill 109 be amended to include in the definition of a "French-speaking person", in addition to persons qualifying under section 23 of the Canadian Charter of Rights and Freedoms, any person whose first Canadian official language is French.
2. that subsections 3(3) and 3(4) be amended to read "The public (Roman Catholic) sector shall be the French-language Board when it governs the public (Roman Catholic) schools and classes ..." instead of "The public (Roman Catholic) sector shall govern for the French-language Board the public (Roman Catholic) schools and classes ...".
3. that paragraphs 4, 5 and 17 of subsection 4(1) be placed after paragraph 18 and that the paragraphs be renumbered accordingly.
4. that steps be taken to amend existing legislation so as to allow persons owning or leasing property jointly to split their school support;

that in the meantime, the marginally note beside subsection 17(2) specify clearly that this subsection deals with jointly owned property rather than properties with multiple owners.
5. that subsection 35(6), paragraph 3 be amended to provide for combining a municipality or one or more of its zones with one or more electoral zones in an adjoining municipality.
6. To attain this objective, full access to the industrial and commercial assessment, based on the number of students under the jurisdiction of each Board, must be realized. This remains our basic recommendation for the immediate and foreseeable future.

7. that subsection 48(3) be amended to read as follows: "The Lieutenant Governor in Council shall provide for the payment to the public sector, to the Roman Catholic sector or to both of such special temporary grants as are required for Francophone pupils to receive services equivalent to those offered to Anglophone pupils.";

that a paragraph be added to guarantee that such measures will remain in effect until the funding of education has been reformed in such a manner as to provide such equality;

that a subsection be added to clarify the distinction between start-up grants and interim measures whose objectives are to assure equality of services.

8. that subsection 61(3) be amended to read as follows: "Subject to subsection (2) and to any agreement signed by two or more existing school boards ...";

that subsection 62(3) be deleted.

9. that subsection 66(1) be reworded so as to recognize this right and duty of the French-language Board to determine the number of its employees and so as to state the need for an agreement on the other points.

PROJET DE LOI 109

MÉMOIRE PRÉSENTÉ À L'ASSEMBLÉE LÉGISLATIVE
DE L'ONTARIO

PAR

LE COMITÉ DE PLANIFICATION DE L'ENSEIGNEMENT
EN LANGUE FRANÇAISE DANS OTTAWA-CARLETON

NOTES

sur le Comité de planification de l'enseignement
en langue française dans Ottawa-Carleton

Ce Comité a été créé par un arrêté en conseil le 28 janvier 1988 afin de travailler à la mise en oeuvre du Conseil de langue française d'Ottawa-Carleton. Il est composé, en plus d'un président et d'un directeur général, des 21 conseillers scolaires francophones élus aux quatre conseils scolaires actuels de la région d'Ottawa-Carleton.

Tant de par son mandat et sa composition que par les délibérations qu'il a tenues et les études qu'il a entreprises, ce Comité est le principal instigateur du futur conseil scolaire. C'est aussi lui qui a le plus d'intérêt à le voir fonctionner efficacement. Par ailleurs, sa composition fait pour ainsi dire du Comité le porte-parole de la communauté éducative francophone d'Ottawa-Carleton.

LISTE DES MEMBRES DU COMITÉ

Président	Jean Comtois
Directeur général	Maurice Lapointe
Membres	Yvan Albert Gaétan Beauchamp Robert Beauchemin Fernand Bégin Robert Bélanger Florian Carrière André Champagne Jean-Guy Châtelain Robert Chénier Hervé Cyr Lucien Dagenais Jacques Domey Marie-Thérèse Fortier Carmen Gervais Yvon Goulet Diane Labrosse Jocelyne Ladouceur Rodrigue Landriault René Lefebvre Gérard Lévesque Gérald Quesnel
Personnes-ressources	Norman Collette, C.S.O. Gérard Huneault, C.E.C. Pierre Marcil, C.E.S.C.O. Robert Pilon, C.E.C.R.C.

N O T E

Les positions présentées dans ce mémoire sont tirées soit de documents approuvés par le Comité de planification de l'enseignement en langue française dans Ottawa-Carleton à sa réunion du 5 mai 1988, documents que nous déposons en annexe auprès du Comité permanent des affaires sociales de l'Assemblée législative de l'Ontario, soit d'échanges avec les présidents et présidentes des groupes représentés au Comité de planification tel qu'entendu lors de la réunion du 5 mai 1988.

La majorité des membres du Comité de planification endosse le document. Les représentants du Conseil de l'enseignement en langue française (C.E.L.F.) du Conseil d'éducation de Carleton ont toutefois aviser qu'il n'entérinait pas ce mémoire.

INTRODUCTION

Le Comité supporte le projet de loi 109 dans sa conception globale. Il le considère comme un geste historique accordant aux francophones la gestion de leurs institutions scolaires locales. Le mode de structure qu'il suggère répond aux attentes de la communauté francophone de la région.

Dans le présent mémoire, le Comité ne s'attarde pas à commenter chaque clause du projet de loi. Tout au long de la rédaction du projet, les cadres du Comité ont eu l'occasion de réagir aux efforts de rédaction et de fournir des suggestions. La présence des représentants du ministère de l'Education aux échanges tenus au Comité et aux études entreprises a facilité cette participation. Le Comité souhaite que cette étude détaillée se poursuive; il demande d'en recevoir les résultats afin que le sens des articles du projet de loi soient clairs pour tous.

Le Comité veut plutôt commenter ici certains des principes, des politiques et des procédés de base énoncés dans le projet de loi 109. Les recommandations et les suggestions présentées suivent l'ordre des parties du projet de loi.

PARTIE PRELIMINAIRE - INTERPRETATION

Article 1: Définition de "francophone"

Cette définition est restrictive en ce sens qu'elle ne permet pas, ni à un citoyen canadien ni à un immigrant reçu dont la langue maternelle est autre que le français ou l'anglais mais dont la première langue officielle du Canada est le français, d'accorder son appui au Conseil de langue française. Ceci est particulièrement vrai pour les personnes n'ayant pas d'enfants d'âge scolaire. Ces personnes peuvent vouloir s'associer à la communauté francophone et même juger qu'elles en font partie.

Le Comité propose donc:

que la Loi sur l'éducation et le projet de loi 109 soient amendés afin que l'on puisse inclure dans la définition de francophone, en plus de toute personne tombant sous le coup de l'article 23 de la Charte canadienne des droits et libertés, toute autre personne dont la première langue officielle du Canada est le français.

PARTIE I

Paragraphe 3(3) et 3(4)

Le Comité est conscient de l'inquiétude suscitée en certains milieux par la perception que des droits garantis par l'article 93 de l'Acte de l'Amérique du Nord britannique et réaffirmés par l'article 15 de la Charte canadienne des droits et libertés peuvent risquer d'être abrogés.

Le Comité est d'avis toutefois que le projet de loi 109:

- ne porte aucunement atteinte à ces droits;
- permet également aux francophones de s'associer pour mieux exercer les droits que leur confère l'article 23 de la Charte et les droits de gestion qui leur ont été reconnus par le jugement de la Cour d'appel de l'Ontario (1984).

Toutefois, afin de clarifier le libellé de la mesure législative et de reconnaître aux sections l'existence qu'elles ont vraiment,

le Comité propose:

que les paragraphes 3(3) et 3(4) qui se lisent actuellement "la section publique (catholique) gère, pour le Conseil de langue française" soient amendés de façon à se lire: "que la section publique (catholique) est le Conseil de langue française lorsqu'elle gère les écoles et les classes".

PARTIE II

Paragraphe 4(1)

Ce paragraphe énumère les questions qui sont de la compétence exclusive des sections. Le Comité est d'accord avec le principe qui accorde aux sections la compétence exclusive des questions définies aux alinéas 1 à 29.

Le Comité est également favorable au processus de mise en commun de certaines questions en tout ou en partie et sur la possibilité d'imposer des conditions. L'ensemble de ces articles apporte donc au processus de mise en commun des garanties auxquelles le Comité souscrit.

Toutefois, il ne faut pas oublier que, tout en respectant les droits acquis, les francophones entendent coopérer dans la poursuite d'objectifs communs. A ce propos, la liste des questions ne pouvant être mises en commun (alinéas 1 à 18) doit être limitée aux seules questions foncièrement reliées à des droits constitutionnels. Il est important et essentiel de respecter ces droits, mais il convient tout autant de prévoir une marge de coopération là où elle ne portera pas atteinte à ces droits et de reconnaître le pouvoir des conseillers scolaires de gérer leurs affaires. D'ailleurs, des ententes locales confient par exemple certains services d'éducation spéciale à tel conseil.

Or,

l'alinéa 4(1)(4) prévoit que non seulement le choix en matériel pédagogique et d'apprentissage est réputé être une question irrévocablement exclusive mais aussi son approvisionnement;

l'alinéa 4(1)(5) traitant des enfants déficients moyens et des cours de formation professionnelle ne reflète pas la réalité vécue par la minorité francophone dans la région et peut empêcher des collaborations nécessaires et financièrement efficaces;

l'alinéa 4(1)(17) sur le perfectionnement professionnel des employés est très vaste et même vague - des programmes de perfectionnement sont déjà offerts conjointement.

Le Comité propose:

que les alinéas 4(1) 4, 5 et 17 soient reportés après la question 18 et que les alinéas soient renumérotés en conséquence.

PARTIE IV

Paragraphe 17(2)

Ce paragraphe semble se rapporter beaucoup plus au droit de propriété conjoint qu'aux droits partagés (propriétaires multiples).

Selon sa formulation, ce paragraphe traite la minorité francophone comme groupe de second ordre. Tandis que la loi actuelle accorde la préférence au système public lorsqu'il n'y a pas unanimité sur le plan religieux ou confessionnel, la mesure législative ne définit pas de priorité sur le plan linguistique. Or, l'alinéa 17(2)(5) accorde, on ne sait pas en vertu de quel raisonnement, la préférence au groupe linguistique anglophone.

Il n'existe peut-être pas de moyens faciles de sortir de cette impasse mais le Comité cherche à sensibiliser les membres de l'Assemblée législative aux occasions où un groupe minoritaire est ainsi traité à cause de la formulation des lois.

Le Comité propose:

que des mesures soient prises pour amender les lois existantes afin de permettre aux personnes possédant ou louant conjointement des propriétés de diviser leurs taxes scolaires;

qu'entretemps, l'explication en marge du paragraphe 17(2) stipule bien que ce paragraphe s'adresse aux propriétés possédées conjointement et non aux propriétés à propriétaires multiples.

PARTIE VIIIAlinéa 35(6)(3)

Le nombre peu élevé de francophones dans certaines municipalités de la région et, par conséquent, le quotient électoral peu élevé représenté par ces groupes pris individuellement nécessitent des regroupements pour fins de répartition des conseillers. Ces regroupements devraient tenir compte de facteurs géographiques et sociologiques de la population francophone (écoles fréquentées, animation communautaire, etc.). Or, le projet de loi 109 permet le regroupement de municipalités ("combined municipalities") ou de quartiers à l'intérieur des municipalités ("electoral zones"), mais ne permet pas de regrouper une municipalité ou l'un de ses quartiers avec un ou plusieurs quartiers d'une municipalité avoisinante. Dans le cas des francophones, une plus grande flexibilité serait désirable et même nécessaire. Ceci est d'ailleurs déjà permis au C.S.O. qui fusionne le Village de Rockliffe au quartier By-Rideau pour sa population anglophone.

Le Comité a déjà effectué une étude de répartition des conseillers; étude basée sur la population francophone dans les différentes municipalités et dans les quartiers municipaux. Cette étude démontre le besoin de cette flexibilité. D'ailleurs, la Loi 79 a reconnu ce besoin et a permis aux francophones toute la flexibilité en cette matière.

Le Comité propose:

que l'alinéa 35(6)(3) soit amendé afin de permettre le regroupement de municipalités ou de zones d'une municipalité avec un ou plusieurs quartiers d'une municipalité avoisinante.

PARTIE IX

Paragraphe 48(3)

Dès le début de son mandat, le Comité de planification de l'enseignement en langue française dans Ottawa-Carleton a insisté pour que le financement du conseil soit tel qu'il puisse assurer aux élèves francophones une qualité de services équivalente à celle disponible aux jeunes anglophones de la région.

Pour atteindre cet objectif, il est nécessaire d'assurer d'abord le plein accès à la taxe industrielle et commerciale en fonction du nombre d'élèves dans chacun des conseils. Cela demeure notre recommandation de base pour l'avenir immédiat et prévisible.

Le gouvernement entend régler cette question en même temps que celle du financement de l'éducation en général dans la province. En attendant, il propose des mesures intérimaires.

Le Comité est d'avis que ces mesures intérimaires devraient être telles

- qu'elles puissent permettre à chaque section et au conseil plénier d'offrir des services équivalents à ceux disponibles aux élèves anglophones;
- qu'elles ne créent aucune diminution des services offerts aux francophones;
- qu'elles n'établissent pas de distinction au chapitre de la capacité financière d'offrir des services entre une section et l'autre du conseil (une section pauvre et une section mieux nantie);
- qu'elles tiennent compte des dépenses additionnelles entraînées par la structure à deux sections;
- qu'elles reconnaissent la nécessité de subventions spéciales de départ puisque le Conseil de langue française se détache des conseils actuels qui continuent d'exister.

Le Comité désire rappeler également le jugement de la Cour d'appel de l'Ontario au 26 juin 1984 qui stipule que

"the quality of education to be provided to the minority is to be on the basis of equality with the majority."

Cette décision a été de plus confirmée par le jugement rendu par le juge Sirois lors de la cause Marchand le 22 juillet 1986.

A cet effet, la référence qui est faite aux mesures intérimaires au paragraphe 48(3) devrait être plus explicite et devrait offrir des garanties quant au temps et quant au niveau de financement.

Le Comité propose:

que le paragraphe 48(3) soit amendé afin de se lire: "Le lieutenant-gouverneur en conseil doit prévoir le paiement à la section publique ou à la section catholique, ou aux deux, des subventions spéciales et temporaires nécessaires pour que les élèves francophones puissent recevoir des services équivalents à ceux offerts aux élèves anglophones.";

qu'un alinéa soit ajouté afin de garantir que ces mesures demeurent en vigueur jusqu'à ce qu'une réforme du financement scolaire vienne offrir cette égalité;

que l'on distingue clairement les subventions de départ des mesures intérimaires qui veulent assurer l'égalité des services.

PARTIE XII

Paragraphes 61(9) et 62(3)

Le Comité est d'accord avec l'approche générale qui spécifie le transfert des institutions scolaires dans un premier temps et le transfert d'autres biens selon une entente équitable conclue à ce sujet.

Pour qu'une entente soit équitable, il faut sans doute que les parties en cause tiennent compte de plusieurs facteurs: contribution passée des francophones à ce conseil, développements récents, besoins du Conseil de langue française, besoins du conseil actuel, situation particulière du conseil, pourcentage des élèves transférés, etc. C'est aux parties de juger lesquels de ces facteurs s'appliquent à leur situation.

Si le projet de loi veut nommer des facteurs, il ne doit pas se limiter à un seul comme il le fait au paragraphe 62(3), mais doit les inclure tous. Un autre choix serait de laisser cette considération aux parties en cause.

Le Comité propose:

que le paragraphe 61(3) soit amendé de la façon suivante: "Sous réserve du paragraphe (2) et sujet aux ententes passées entre des conseils actuels, si un emplacement ...";

que le paragraphe 62(3) soit abrogé.

PARTIE XIII

Paragraphe 66(1)

Le Comité est d'avis qu'il doit y avoir des ententes entre les conseils actuels et le Conseil de langue française au sujet du nombre d'employés transférés de chaque conseil, du choix de ceux-ci et de la procédure de mutation. Un des documents déposés en annexe à ce mémoire démontre le résultat des discussions entreprises à ce sujet.

Toutefois, le Comité estime que le nombre d'employés dont a besoin le Conseil de langue française doit être déterminé par ce dernier uniquement (voir alinéa 66(1)(b)).

Le Comité propose:

que le paragraphe 66(1) soit reformulé pour reconnaître le droit et l'obligation du Conseil de langue française en matière de transferts d'employés de déterminer le nombre de ses employés et pour spécifier la nécessité d'une entente sur les autres points.

COMMENTAIRE GÉNÉRAL

Les membres du Comité de planification souhaiteraient que tout doute concernant la constitutionnalité du projet soit éclairé le plus rapidement possible. Les membres du Comité de planification n'ont pas d'objection à ce que le gouvernement décide de faire vérifier cette constitutionnalité par un jugement de la cour.

CONCLUSION

Le Comité veut, en terminant, remercier les membres de l'Assemblée législative de l'appui accordé à ce projet à sa deuxième lecture. Le Comité est d'avis qu'avec des amendements visant à préciser le contenu ou la forme de certains articles, le projet de loi 109 pourra constituer une initiative historique pour les francophones de l'Ontario.

A N N E X E "A"

Recommandations

Le Comité propose:

1. que la Loi sur l'éducation et le projet de loi 109 soient amendés afin que l'on puisse inclure dans la définition de francophone, en plus de toute personne tombant sous le coup de l'article 23 de la Charte canadienne des droits et libertés, toute autre personne dont la première langue officielle du Canada est le français.
2. que les paragraphes 3(3) et 3(4) qui se lisent actuellement "la section publique (catholique) gère, pour le Conseil de langue française" soient amendés de façon à se lire: "que la section publique (catholique) est le Conseil de langue française lorsqu'elle gère les écoles et classes".
3. que les alinéas 4(1) 4, 5 et 17 soient reportés après la question 18 et que les alinéas soient renumérotés en conséquence.
4. que des mesures soient prises pour amender les lois existantes afin de permettre aux personnes possédant ou louant conjointement des propriétés de diviser leurs taxes scolaires;

qu'entretemps, l'explication en marge du paragraphe 17(2) stipule bien que ce paragraphe s'adresse aux propriétés possédées conjointement et non aux propriétés à propriétaires multiples.
5. que l'alinéa 35(6)(3) soit amendé afin de permettre le regroupement de municipalités ou de zones d'une municipalité avec un ou plusieurs quartiers d'une municipalité avoisinante.
6. Pour atteindre cet objectif, il est nécessaire d'assurer d'abord le plein accès à la taxe industrielle et commerciale en fonction du nombre d'élèves dans chacun des conseils. Cela demeure notre recommandation de base pour l'avenir immédiat et prévisible.

7. que le paragraphe 48(3) soit amendé afin de se lire: "Le lieutenant-gouverneur en conseil doit prévoir le paiement à la section publique ou à la section catholique, ou aux deux, des subventions spéciales et temporaires nécessaires pour que les élèves francophones puissent recevoir des services équivalents à ceux offerts aux élèves anglophones.";

qu'un alinéa soit ajouté afin de garantir que ces mesures demeurent en vigueur jusqu'à ce qu'une réforme du financement scolaire vienne offrir cette égalité;

que l'on distingue clairement les subventions de départ des mesures intérimaires qui veulent assurer l'égalité des services.

8. que le paragraphe 61(3) soit amendé de la façon suivante: "Sous réserve du paragraphe (2) et sujet aux ententes passées entre des conseils actuels, si un emplacement ...";

que le paragraphe 62(3) soit abrogé.

9. que le paragraphe 66(1) soit reformulé pour reconnaître le droit et l'obligation du Conseil de langue française en matière de transferts d'employés de déterminer le nombre de ses employés et pour spécifier la nécessité d'une entente sur les autres points.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON

MONDAY, MAY 30, 1988

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitutions:

Beer, Charles (York North L) for Mrs. O'Neill

Owen, Bruce (Simcoe Centre L) for Mr. McClelland

Reville, David (Riverdale NDP) for Mr. Allen

Clerk: Carrozza, Franco

Staff:

Gardner, Dr. Robert J. L., Assistant Chief, Legislative Research Service

Witnesses/Témoins:

De l'Association française des Conseils scolaires de l'Ontario:

Marion, Roland, président

Grattón, Ginette, directrice générale

De l'Association des surintendantes et des surintendants franco-ontariens:

Castonguay, Lise, présidente

From the Ontario Separate School Trustees' Association:

Sherlock, James, Past President

Moseley-Williams, Betty, First Vice-President

Lauwers, Peter D., Legal Counsel; with Day, Wilson, Campbell

From the Association of Large School Boards in Ontario:

Nelson, Fiona, President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, May 30, 1988

The committee met at 3:45 p.m. in room 151.

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
(continued)

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON
(suite)

Consideration of Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Etude du projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

M. le Président: Mesdames et messieurs, bienvenue à une réunion du Comité permanent des affaires sociales concernant le projet de loi 109, Loi de 1988 sur le Conseil de langue française d'Ottawa-Carleton.

Le Comité a tenu des audiences publiques à Ottawa la semaine dernière. Les personnes désirant de plus amples renseignements peuvent composer les (416) 965-6834.

Ladies and gentlemen, welcome to the meeting of the standing committee on social development on Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

We held public hearings last week in Ottawa and we are continuing those hearings here in Toronto this week. Those interested in further details should phone (416) 965-6834. For the benefit for those making presentations today, I would mention that today's proceedings will in fact go out on the parliamentary channel tomorrow morning, that is to say Tuesday. Both today's proceedings and tomorrow's will be broadcast on the parliamentary channel on Friday.

Before we begin with the delegations, there are some organizational matters for the committee and, if you will excuse me, we will just get on with those. First of all, for the members of the committee, regarding the letter to the Attorney General (Mr. Scott) about the constitutionality question that was raised in Ottawa, that letter has gone.

Mr. Jackson: Could I have a copy of it?

Mr. Chairman: By all means. We will tell the clerk when he comes back, OK? Franco suggested that the members of the opposition might receive copies of the letter to Ian Scott.

We have also received one of the legal papers on the constitutionality matter. That is the Beaudoin paper, and I have it here. This one, although it is relatively long, I think is not too long to copy. I think we will provide this to members of the committee. I understand we will be getting the Foucher report perhaps tomorrow, and there are others. Some of them are quite long, and when they arrive, I think we might decide among ourselves whether we need to copy them all. We can discuss that as the occasion arises.

If I could talk to the committee about the schedule for the next couple of weeks, again I apologize to the audience, because some of these things will not mean much to you.

As you can see from the material you have before you, our agenda is very full with delegations today and tomorrow on Bill 109. It remains to be seen whether we will need Thursday, but Thursday, as you know, is still available for these hearings.

Next Monday, by agreement of the three parties, my understanding is that we proceed to Bill 107. Bill 107 is An Act to amend the Child and Family Services Act, 1984. My understanding is that the parties have agreed that there will be two days of hearings—that is to say, Monday, June 6, and Tuesday, June 7. The clause-by-clause meeting will be on Thursday, June 9.

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I would ask all members who have groups that they would like notified in connection with Bill 107 to let the clerk know as soon as possible and we will inform those groups as quickly as possible.

That takes us to the end of next week, Thursday, June 9. On the following Monday, which is June 13, we begin clause-by-clause discussion of this bill, Bill 109. Those hearings will continue Tuesday, June 14, and if necessary—and one might say probably—to Thursday, June 16.

Is that agreeable to all members of the committee and is that the way people understand it?

Mr. Reville: That will take us probably to the end of the spring session, although we do not quite know that yet. That leaves the committee wondering what it might do in the recess. I can tell you as one of the whips that we are interested in hearing just what it is that committees want to do in the recess, if anything.

At this point we have made some decisions in respect of the select committee on education, the select committee on energy and the committee that will be dealing with Sunday shopping legislation. That will be the standing committee on administration of justice, we believe. We are interested in committee chairs, in consultation with their committee members, forwarding their suggestions and their wishes to the House leaders for review.

Clearly, one of the things this committee might want to do is take a look at Bill 50 during the recess, and possibly at the substantive recommendation from the standing committee on public accounts, which took a look at the auditor's review of the mental health system.

That might be a companion piece of work that the committee might want to think about doing, in which case, Mr. Chairman, that recommendation should be made shortly to the House leaders so that it can get into the hopper with the other requests. You will recall that in the last recess this committee did not get a chance to sit. You probably deserve a chance to sit during the next one.

Mr. Chairman: Are there any other comments on that topic?

Mr. Jackson: First, Mr. Chairman, I want to apologize for being late and holding up the hearings, but I was detained in the House with respect to amendments to Bill 125. They went on for a few minutes longer than

anticipated, but I apologize for that and would hope the House leaders could organize that a little better when members of this committee should have been vitally involved in that exercise.

Second, I indicated in the House a few moments ago, on a statement that the minister made about his willingness to work within the committee system, a request I had made that Bill 100 be referred to this committee before the end of this session. Therefore, I just thought I would share that with you, Mr. Chairman, so that you are given as much notice as possible. That, I believe, will be discussed in the House on Wednesday, but if all goes according to plan, that may be referred to this committee as well. I just thought I would share that.

Failing those two points, I am in concurrence with the schedule you have set out.

Mr. Chairman: Thanks.

Mr. Campbell: I think that is the understanding of the schedule. It should be noted, perhaps, that the business of this committee will be decided by the chair in consultation, of course, with the House leaders to organize that. I will hold any other comments so that we can get going with the delegations, because they have been waiting, Mr. Chairman.

Mr. Chairman: I thank you all for that. I would be glad to receive any other suggestions. We have made a note of the bills which have been mentioned. I will certainly convey that information and any other information you would care to give me to the House leaders.

Mr. Reville: On a point of order, Mr. Chairman: Just further to Mr. Jackson's explanation, I should point out to the chair that the standing orders do not allow a committee of this Legislature to be dealing with an item in the same issue field when there is a bill before the House.

Mr. Jackson does not need to apologize except out of politeness. This committee should not have been meeting at all to deal with an education matter while he was carrying an education matter in the House. You might want to indicate to the House leaders that it was inappropriate of them to schedule Bill 125 while you were dealing with Bill 109.

Mr. Chairman: I picked up that piece of information. I will certainly do that. I have already apologized to the delegations. I think, by the way, we are meeting because we had invited people to join us.

Mr. Reville: Exactly. No, you were quite appropriate to go ahead. What I am suggesting is that the House leaders should not have scheduled Bill 125 during a time when you were doing public hearings. Thank you for your attention.

Mr. Chairman: Thank you, Mr. Reville, for being here.

The last item then, because I would like to get on, is to say to members of all parties that if they have amendments, they should bear in mind that they can be translated into French by the office of the legal counsel. I would urge them to make use of that service.

Ladies and gentlemen, for the delegations, we will assume we have begun at four o'clock. We simply move everything back half an hour. Each group, as

you can see, has half an hour. We are clearly not going to pressure you into that, but I would remind you that the half hour does include questions. It is often better for you if the members of the committee get a chance to question you.

La première délégation est l'Association française des Conseils scolaires de l'Ontario.

Would each of you say your name and affiliation slowly into the microphones for the benefit of Hansard and translation before you begin, please begin.

ASSOCIATION FRANCAISE DES CONSEILS SCOLAIRES DE L'ONTARIO

Mme Gratton: Ginette Gratton, directrice générale.

M. Marion: Roland Marion, président.

Monsieur le Président, merci bien; merci bien au Comité aussi. Cela nous fait plaisir de vous adresser la parole aujourd'hui au sujet du projet de loi 109, aussi bien que de vous exprimer le fait que nous vous remercions vraiment. Nous remercions le gouvernement de l'initiative qui a lieu en ce moment pour établir le premier conseil scolaire de langue française, c'est-à-dire celui d'Ottawa-Carleton.

Premièrement, je devrais peut-être vous indiquer que j'ai été devant ce Comité dans le passé. Cela fait dix ans que je suis conseiller scolaire. J'étais président du Conseil scolaire de Niagara-Sud dans le temps où la Loi 30 a été présentée, et puis j'ai aussi comparu devant le Comité quand j'étais membre de l'Association of Large School Boards in Ontario. Durant ces dix années-là, j'ai vu beaucoup de choses se dérouler en éducation, et c'est avec une grande joie que nous accueillons l'initiative du gouvernement maintenant.

Pour ceux qui ne savent pas ce que c'est que l'Association française des Conseils scolaires de l'Ontario, l'Association a été fondée en 1944 pour promouvoir l'éducation française en Ontario. C'est la seule association, je dis bien la seule, qui regroupe les Franco-Ontariens élus au suffrage universel pour représenter les intérêts des francophones. Nous avons 75 conseils scolaires sous notre juridiction, et les élèves compris dans ces conseils scolaires sont représentés par 500 conseillers scolaires qui sont membres de comités consultatifs et de conseils d'éducation de langue française.

Ce qui est important à reconnaître, pour nous autres, c'est, premièrement, que ça fait des années que nous revendiquons la gestion de nos écoles; ça fait des années qu'il y a des études sociologiques dont les résultats sont assez bien connus: c'est-à-dire que les Canadiens français cherchent à avoir la chance de déterminer leur avenir et de décider de la vocation de leurs écoles.

Alors, c'est avec joie, comme je l'ai dit, que nous avons reçu la nouvelle, justement, qu'on était pour procéder avec la Loi 109. De plus, nous devons dire que le gouvernement est proactif et démontre le genre de leadership qu'on voit maintenant. Vous allez voir partout dans la province que les francophones, les Franco-Ontariens sont, je pense à l'unanimité, sans doute très épatés de ce qui se passe.

Maintenant, ce qu'on demande depuis quelque temps, c'est aussi d'avoir les moyens de résoudre les problèmes créés par la Loi 75. Il y a sans doute

des problèmes - je peux vous en donner des exemples - qui ne sont surtout pas entre les conseils de l'enseignement en langue française mais plutôt avec les sections majoritaire et minoritaire des conseils scolaires, et on n'a pas de processus pour régler les problèmes existants.

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Alors, nous avons très bien reçu la nouvelle lorsque le ministre de l'Education (M. Ward) a déclaré récemment qu'il permettrait la création d'une commission d'appel qui permettrait justement un forum pour régler les problèmes qui existent. En ce moment, notre information est que, malheureusement, les conseillers scolaires, surtout ceux qui siègent pour la minorité, n'ont peut-être pas tout ce qui est nécessaire pour être capables de résoudre les disputes avec la majorité, sans passer par les tribunaux.

Il est regrettable que ce soit le cas. On aimerait mieux que l'on crée tout de suite une commission d'appel, tel que le ministre a déclaré, pour permettre à la minorité d'avoir la gestion totale, tel que la Loi 75 le lui permet. Aussi, cette commission d'appel va trancher d'autres questions. Je suis convaincu que même à Ottawa-Carleton, avec la nouvelle législation, il y aura des conflits ou des choses où on aura à interpréter, à décider qui a vraiment l'autorité et comment nous allons accomplir ce qui est décrit dans la législation. Ce sera un forum auquel on pourrait expédier les disputes, où on pourrait résoudre les conflits et s'assurer que la loi va très bien fonctionner.

Je vous souligne aussi le fait que le ministre a suggéré qu'il y aurait possiblement, à l'avenir, une commission de gestion scolaire, et lorsque cette commission aura eu la chance d'étudier dans la province et de procéder avec l'initiative, c'est-à-dire celle de créer de nouveaux conseils scolaires de langue française, sans doute que la commission d'appel tentera aussi de résoudre les conflits, de régler les disputes qu'on verra sans doute dans la province lorsqu'on tentera d'implanter ce qui a été proposé. La commission de gestion de langue française aura la responsabilité, premièrement, de consulter la population des Franco-Ontariens pour déterminer les territoires, la nature et la structure des nouveaux conseils de langue française.

Alors, on croit que ces deux commissions sont essentielles pour permettre aux nouveaux conseils scolaires de langue française de tenir compte des spécificités régionales, des droits religieux et aussi de la répartition géographique des francophones.

Je sais qu'il y a beaucoup de controverses, et vous en êtes sans doute témoins, au sujet du projet de loi 109. Maintenant, qu'est-ce qui est vraiment difficile à croire et à accepter pour les Franco-Ontariens? Les Franco-Ontariens veulent avoir la gestion de leurs écoles et, comme je l'ai dit, déterminer leur avenir. Cela fait des années qu'on demande ça et on est très heureux de la nouvelle que le premier conseil scolaire de langue française entrera bientôt en vigueur.

Mais on sait qu'il y a d'autres groupes politiques et qu'il y a d'autres associations, ainsi que d'autres personnes, qui s'opposent et sont défavorables à ce qui est proposé par le gouvernement. Je crois que ce ne sont vraiment pas les Franco-Ontariens qui s'expriment contre le projet mais plutôt d'autres groupes - et je crois que vous devriez en être conscients - qui veulent protéger ce qu'ils ont, peut-être aux dépens même de ceux qui cherchent justement à avoir la chance de faire ce qu'ils doivent faire pour leurs étudiants, pour les jeunes Franco-Ontariens.

Malheureusement, je crois que ces groupes sont motivés non seulement par des raisons politiques mais par d'autres raisons, et je vous souligne et je vous demande de regarder de près les raisons d'être, c'est-à-dire ce qui motive ceux qui vous font des commentaires défavorables.

Ce qui est très inquiétant, c'est que si vous vous rappelez peut-être, puisque j'ai été ici et j'ai parlé avec quelques-uns d'entre vous lorsque la Loi 30 a été proposée, et je me rappellerai toujours que, à ce moment-là, beaucoup de conseils publics, tels que celui de Niagara-Sud, dont j'étais président - et je vous ai fait une présentation, mais qui ne disait pas qu'en réalité, on ne voulait pas la Loi 30, le parachèvement; on vous disait seulement: assurez-vous que les étudiants de la province sont très bien servis puisque c'est l'avenir de la province de l'Ontario qui est en jeu.

La même chose s'applique aujourd'hui, c'est-à-dire que ce n'est pas pour protéger notre royaume. S'il y en a qui ont peur, qui disent: «Nous craignons que vous ne nous enleviez quelque chose pour respecter le droit qui existe pour les Franco-Ontariens», et qui prétendent que nous vous demandons de nous protéger aux dépens des autres, ce qui n'est pas du tout le cas. Alors, soyez conscients du fait qu'en réalité, ce sont tous les étudiants de la province de l'Ontario qui doivent être considérés dans vos délibérations, et surtout le fait que les Franco-Ontariens se demandent depuis longtemps ce qui va se passer à Ottawa-Carleton et surtout après l'annonce faite récemment par le ministre de l'Éducation qu'il y aurait d'autres conseils de langue française.

Nous avons décidé de ne pas commenter spécifiquement les articles de la Loi, à cause du fait, premièrement, que nous appuyons ce que le comité d'Ottawa-Carleton vous suggère et leurs commentaires. Je pense que vous en êtes sans doute tous conscients, et puis vous avez reçu beaucoup de présentations sur ce sujet.

La seule chose que je puisse dire, c'est sur la définition de «francophone». Je sais qu'il y a eu des discussions là-dessus. Dans ces discussions, on est peut-être tous un peu mal placés pour trancher cette question puisque c'est une question qui, à mon avis, serait probablement constitutionnelle. La définition de «francophone» se trouve dans la Charte des droits et libertés; il faudrait s'assurer vraiment de ne pas limiter ou de ne pas exagérer la définition qui se trouve dans la Charte des droits et libertés. C'est une décision constitutionnelle, ce n'est pas vraiment une question qui est sous la juridiction d'un comité, ou de ce Comité, avec tout le respect que je vous dois.

Je peux aussi vous souligner que la Cour d'appel, dans sa décision de 1984 qui a vraiment permis aux francophones de franchir beaucoup d'étapes en matière d'éducation, a indiqué que c'est la gestion des écoles par les Franco-Ontariens. Alors, je vous renvoie justement à la Charte des droits et libertés. Je sais que dans vos considérations vous allez y prêter l'attention nécessaire.

Je me rappelle aussi que lorsque j'ai fait ma présentation sur la Loi 30, que ce soit pour ALSBO ou pour le Conseil scolaire de Niagara-Sud, et que nous avons discuté d'éducation, ça revient toujours au dollar. Et puis il nous faut vous souligner que la question de financement est une des plus importantes questions en matière d'éducation aujourd'hui, et lorsque le gouvernement annonce toute sortes d'initiatives - c'est-à-dire toutes sortes de projets - et détermine ses priorités, ce qui arrive, c'est que souvent on peut arriver un peu à côté, à cause du fait qu'on n'y place pas l'argent nécessaire pour s'assurer que les conseils scolaires qui doivent répondre aux attentes du ministère pourront vraiment le faire s'ils n'ont pas d'argent.

Alors, avec la Loi 82, par exemple, et d'autres initiatives, on a eu des difficultés. C'est la même chose pour les francophones de la province de l'Ontario. Maintenant qu'on a de nouvelles initiatives, nous sommes très conscients du fait. Nous craignons qu'un financement adéquat ne soit pas là, et je crois que certains conseils d'éducation de langue française ont même fait des commentaires sur le fait que le financement nécessaire n'était pas garanti dans le projet de loi.

Alors, il faut regarder de près le fait que l'assurance, dans le projet de loi, que le nouveau conseil de langue française pourra fonctionner et assurer la même qualité d'éducation du côté francophone qu'on permet à la majorité, c'est très important.

Je vous souligne aussi une affaire qui nous préoccupe depuis qu'on parle du recensement et de la Loi 125, qui vient d'être débattue. On a tenté de souligner qu'il y a une chose qui n'est peut-être pas équitable dans tout cela: c'est-à-dire qu'on est francophone seulement si on l'indique et on est anglophone automatiquement si on ne l'indique pas. Alors, il y a beaucoup de Franco-Ontariens qu'on ne pourra jamais retrouver dans la province avant les prochaines élections, et malgré ça, la Loi 125 dit que le nombre de conseillers scolaires sera déterminé justement par le fait que ces personnes ont refusé, ou ne savaient pas, ou n'avaient pas d'information pour s'identifier à temps. On n'a peut-être même pas compris la formule qui a été présentée, et je vous indique qu'elle était déficiente puisqu'elle disait en anglais, mais non en français: <Identify those who reside with you>. En français, ça ne disait pas du tout ça. Alors, il ne fallait pas identifier, en français, toutes les personnes qui habitaient le même foyer.

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Il est peut-être un peu ridicule de le dire, mais c'est la même chose pour le financement. Justement, le principe de la dissidence que vous voyez pour la question de représentation par les conseillers scolaires, la répartition des conseillers scolaires, s'applique au financement: l'argent ne sera pas versé au conseil de langue française à moins que la personne ne s'identifie. Aussi, on craint qu'on ne puisse pas mettre la main sur les taxes industrielles et commerciales encore à cause du fait qu'automatiquement, si on n'est pas identifié comme faisant partie de la minorité, on ne sera pas calculé là-dedans, on ira tout de suite du côté majoritaire et l'argent suivra. Alors, c'est vraiment inéquitable, et on vous souligne la difficulté que cette Loi peut causer.

Le prochain point que je vous apporte, c'est la question de la répartition du territoire. Les francophones ne sont pas distribués dans la province de l'Ontario de la même façon que la majorité, c'est-à-dire qu'en ce qui concerne nos conseils scolaires, si on les fonde plus tard, il va falloir choisir des territoires qui seront différents. Ce ne sera pas un territoire de municipalité, comme c'est le cas en ce moment. Ce seront peut-être des conseils régionaux, comme ceux que vous avez partout dans la province; ce seront peut-être partout des quartiers dans certaines municipalités qui seront regroupés pour faire partie d'un conseil scolaire. Il va falloir vraiment une étude plus approfondie de la question au niveau provincial pour décider de la répartition des territoires.

Comme je vous l'ai dit, notre présentation tente de s'adresser à vous surtout en tenant compte de la base provinciale, puisque nous représentons des conseillers scolaires catholiques, des conseillers scolaires publics et les Franco-Ontariens, qui s'expliquent et s'expriment d'une voix dans la province

en réalité, et qui vous demandent de reconnaître certaines choses lorsque vous exercez votre droit comme législateurs: c'est-à-dire de reconnaître les spécificités régionales, les droits religieux acquis, la répartition géographique des francophones et d'assurer, comme je vous l'ai dit, le financement qui sera nécessaire pour assurer, en réalité, que les conseils scolaires de langue française dans la province de l'Ontario, aussi bien que celui d'Ottawa-Carleton, pourront fonctionner. Après tout, c'est vraiment l'avenir des Franco-Ontariens qui est en jeu et qui est entre vos mains.

Nous serons heureux de répondre à vos questions. Vous avez le mémoire que nous vous avons donné, j'espère. Si vous avez des questions, nous tenterons d'y répondre. Merci bien.

M. le Président: Merci beaucoup, Monsieur Marion. Madame Gratton, auriez-vous quelque chose à ajouter?

Mme Gratton: Non, je n'ai rien à ajouter. Je peux répondre à des questions, s'il y en a.

M. le Président: Très bien. Y a-t-il des questions? Monsieur Marion, pensez-vous que ce modèle a vraiment des possibilités pour le reste de la province?

M. Marion: Eh bien, la position officielle de l'AFCSO, c'est que le modèle lui-même est un modèle, et puis je crois que la population, par exemple celle dans certains territoires de la province de l'Ontario, pourrait facilement se décider pour un autre modèle - par exemple, à Toronto ce serait un conseil public - et puis il y aurait sans doute d'autres territoires en Ontario où ce modèle sera approprié, ou il se peut que ce soit très semblable et qu'il soit adopté par les groupes représentant les francophones de ces territoires-là. Alors oui, ça peut s'appliquer, mais je pense que ce sera vraiment décidé par les Franco-Ontariens un peu partout dans la province.

M. le Président: Vous avez mentionné la constitutionnalité.

M. Marion: Oui.

M. le Président: Avez-vous d'autres pensées sur cela? Comme vous l'avez vu, nous avons pris cela en considération.

M. Marion: Mes seules pensées sont les suivantes: si la Loi constitutionnelle définit un francophone, un Franco-Ontarien, que la définition se trouve dans la Charte des droits et libertés et que la Cour d'appel dit que la gestion est à ceux qui ont un droit sous la Charte des droits et libertés, alors la Cour d'appel vient de donner à ces personnes qui sont définies dans le document constitutionnel le droit à la gestion de leurs écoles. Qu'est-ce qui arrive si, à un autre niveau, au niveau de la législation provinciale, on change la définition que la Cour d'appel...

Alors, la Cour d'appel a passé le pouvoir entre les mains des personnes définies dans la Charte des droits et libertés, et s'il y a un document ou une loi provinciale qui tente de changer cette définition, je vous laisse considérer s'il y a vraiment une question constitutionnelle. Est-ce que la gestion va demeurer entre leurs mains? Ce n'est pas à moi d'y répondre, mais ce serait intéressant. Peut-être qu'un jour il va falloir faire une étude approfondie à ce sujet puisqu'il y a peut-être des difficultés constitutionnelles.

M. le Président: Merci beaucoup, Monsieur Marion et Madame Gratton. La présentation de l'Association a été très intéressante.

M. Marion: Merci, bonjour.

M. le Président: La deuxième délégation est l'Association des surintendantes et des surintendants franco-ontariens. Nous avons Lise Castonguay. Madame Castonguay, pouvez-vous dire votre nom et votre affiliation clairement dans le microphone?

ASSOCIATION DES SURINTENDANTES ET DES SURINTENDANTS FRANCO-ONTARIENS

Mme Castonguay: Lise Castonguay, présidente de l'Association des surintendantes et des surintendants franco-ontariens.

M. le Président: Merci. Allez-y.

Mme Castonguay: Merci, Monsieur le Président. L'Association des surintendantes et surintendants franco-ontariens, ASFO, est heureuse de l'occasion qui lui est offerte de rencontrer le Comité permanent des affaires sociales afin de lui faire part de quelques inquiétudes qui touchent particulièrement les membres de l'Association concernés par les changements proposés dans le projet de loi 109.

L'ASFO comprend que le présent projet ne s'applique qu'à Ottawa-Carleton. Elle appuie donc le projet de loi 109, car il respecte un consensus local qui veut la mise sur pied d'un conseil de langue française. L'ASFO considère essentiel que la mise sur pied de nouvelles structures ou de nouveaux modèles ailleurs dans la province respecte aussi les désirs et les aspirations des communautés impliquées.

L'honorable Chris Ward, dans sa déclaration à l'Assemblée législative le 11 avril, souligne qu'à son avis, «le projet de loi est conforme aux droits constitutionnels conférés à l'article 23 de la Charte canadienne des droits et libertés, ainsi qu'à l'article 93 de la Loi constitutionnelle».

Afin que le langage reflète clairement l'intention du gouvernement de sauvegarder tous les droits acquis, l'ASFO recommande que les paragraphes 3(3) et (4) se lisent comme suit:

<(3) La section publique est le conseil de langue française lorsqu'elle gère les écoles et les classes publiques du conseil de langue française et exerce les pouvoirs, les fonctions et les droits que lui attribue la présente Loi.

<(4) La section catholique est le conseil de langue française lorsqu'elle gère les écoles et les classes catholiques du conseil de langue française et exerce les pouvoirs, les fonctions et les droits que lui attribue la présente loi.>

La Loi se doit d'être claire afin que l'organisation administrative et pédagogique de chaque secteur respecte sans équivoque les questions relevant de la compétence exclusive de la section catholique, c'est-à-dire les dispositions 4(1)1 à 18 de la partie II.

En ce qui a trait aux qualifications des agents de supervision, aux articles 50, 51, 52 et 53 de la partie X, l'ASFO est d'accord dans la mesure où les qualifications, les fonctions et le champ d'application de certaines

dispositions demeurent explicites. Il nous apparaît essentiel que le directeur général ou la directrice générale du conseil plénier et les directeurs ou directrices d'éducation des secteurs soient qualifiés selon le paragraphe 253(1) de la Loi sur l'éducation et que le champ d'application de ces derniers respecte les paragraphes 253(2) et (3) de la Loi sur l'éducation avec les adaptations nécessaires.

La partie XIII nous inquiète de façon particulière; c'est la partie sur la mutation des employés. Malgré le fait que ministre de l'Éducation (M. Ward), dans sa déclaration, avoue que ce projet de loi protège tous les employés qui seraient mutés, la place ou la protection des agents de supervision ne nous apparaît pas évidente. Nous souhaitons un langage plus précis afin que les agents de supervision puissent se reconnaître dans le texte de loi.

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Voici quelques suggestions qui pourraient répondre à nos préoccupations; d'abord la définition de «employé» dans le paragraphe 63(1):

«"employé" s'entend d'un enseignant(e), d'un agent(e) de supervision, d'un gestionnaire ou d'un autre employé, y compris un employé au sens de la Loi sur les relations de travail. Sont toutefois exclus le directeur de l'éducation, le secrétaire et le trésorier du conseil.»

Nous croyons qu'il faudrait ajouter un quatrième paragraphe à l'article 63 afin de s'assurer que les agents de supervision et les gestionnaires seront nettement protégés. Il pourrait se lire comme suit:

<(4) Que tous les articles de la partie XIII s'appliquent avec les adaptations nécessaires aux agent(e)s de supervision et aux gestionnaires qui travaillent pour les modules de langue française dans les présents conseils d'Ottawa et de Carleton.>

De plus, les postes des agents de supervision désignés qui décident de ne pas être mutés doivent être annoncés. Nous vous suggérons que le paragraphe 65(4) se lise comme suit:

<(4) Immédiatement après le 1^{er} février 1989, chaque conseil de langue anglaise affiche un avis des postes d'agent(e)s de supervision, d'enseignant(e)s, de gestionnaires à l'égard desquels des avis d'objection ont été reçus, dans un endroit bien en vue dans chacune de ses écoles, de son siège social et de ses bureaux administratifs.>

Les agents de supervision et les gestionnaires n'ont pas nécessairement des contrats de travail ou des ententes. Afin de reconnaître les liens aux conseils, nous recommandons que l'article 65(9) se lise comme suit:

<(9) Sous réserve des articles 69 et 77, le contrat d'enseignement, le contrat d'emploi, la résolution du conseil ou la relation de travail, selon le cas, de l'employé muté en vertu du présent article est transféré au conseil de langue française à compter du 1^{er} septembre 1989, et ce conseil l'assume.>

Et l'article 65(10) se lirait comme suit:

<(10) Le conseil de langue française accorde à la personne dont le contrat d'enseignement, le contrat d'emploi, la résolution du conseil ou la relation de travail lui est transféré un poste essentiellement semblable,

défini par lettre d'embauchage ou résolution du conseil, à celui qu'elle occupait au conseil de langue anglaise immédiatement avant sa mutation, et qu'en aucun cas, cette mutation ne résulte en un poste inférieur à ces derniers postes.)

Membres du Comité, l'ASFO ne tient pas compte dans cette présentation d'inquiétudes telles que la définition d'un francophone, le financement * équitable garanti, le transfert ou la mutation des enseignants et j'en passe, puisque d'autres groupes ont su ou sauront sûrement faire des recommandations adéquates dans ces domaines importants. Par contre, les membres de notre Association s'en voudraient de ne pas souligner les effets positifs qu'aura cette loi sur la programmation et les services aux élèves francophones desservis par le nouveau conseil de langue française.

Toutes les associations francophones revendiquent auprès du ministre de l'Éducation une direction en programmation pour les écoles de langue française, ainsi qu'une structure ministérielle qui nous permette un leadership provincial et régional quant à la programmation dans nos écoles.

Il nous semble que ce nouveau conseil peut être fort de ses effectifs, de ses ressources et de ses expertises. La possibilité d'unifier, de planifier et de collaborer dans l'élaboration et la mise en oeuvre de programmes et de services aux élèves nous semble un atout qui portera des fruits certains pour les jeunes francophones de cette région.

En terminant, les membres de l'ASFO vous remercient de votre écoute. Nous sommes confiants que les membres du Comité permanent des affaires sociales verront à apporter les changements nécessaires afin que les membres de l'ASFO soient clairement protégés. Acceptez notre plus grand respect pour les efforts que vous déployez dans le but de répondre aux aspirations des francophones de la région d'Ottawa-Carleton.

M. le Président: Y a-t-il des questions? Linda LeBourdais.

Mme LeBourdais: Madame Castonguay, je pense que vous n'avez pas mentionné la définition de <francophone>. Je voudrais vous demander si vous vous sentez à l'aise avec la définition telle qu'expliquée dans la Charte canadienne des droits et libertés, ou si vous y voyez certains problèmes.

Mme Castonguay: Eh bien, il est sûr que nous sommes à l'aise avec cette définition-là. Nous ne sommes pas des avocats ni des constitutionnalistes. Par contre, s'il est possible que la Loi sur l'éducation élargisse le cadre afin d'y inclure les francophones qui ont comme langue première le français au Canada, il nous semble que ce serait avantageux pour le conseil de langue française d'Ottawa-Carleton.

Mme LeBourdais: D'accord, merci.

M. le Président: Y a-t-il d'autres questions? Cam Jackson.

Mr. Jackson: I am fascinated by your reference to an amendment in subsection 65(10). I concur with you that the wording "substantially similar" leaves a lot to interpretation, but unless something was lost in the translation, how much of an improvement is "un poste inférieur" or, if I am to translate that, "a position of lesser importance"?

Mme Castonguay: Nous ne voudrions pas avoir des postes inférieurs aux postes actuels.

Mr. Jackson: Has the government at any point, or in the consultation process, given any further clarification about what is meant by "substantially similar"? I guess that is at the root of why you have further— Are you unsatisfied with the response you were given or, in your judgement, do you feel it requires further clarification?

Mme Castonguay: A notre avis, on n'a pas donné une attention spéciale aux surintendants ou aux agents de supervision. Nous avons parlé des enseignants et des enseignantes, mais on ne se reconnaît pas dans la Loi. Probablement que ce n'est pas contentieux dans le sens que nous ne sommes pas certains si nous sommes là ou non. Alors, nous voudrions que ce soit clair et que le poste soit un poste équivalent.

Mr. Jackson: I understand equivalency because that is a reference we have used in Bill 30. However, I will take your suggestion under advisement and I thank you for it.

M. le Président: D'autres questions ou commentaires? Madame Castonguay, je vous remercie beaucoup.

Mme Castonguay: Merci, Monsieur le Président.

Mr. Chairman: The next delegation we have, and I do appreciate the fact that we have caught up the time, is the Ontario Separate School Trustees' Association. Would you come forward, please? For members of the committee, I think we are supposed to have three briefs.

Before you begin, perhaps you could start at my left and give your name and affiliation for the benefit of Hansard and the translators. Just speak clearly into the microphone, please.

ONTARIO SEPARATE SCHOOL TRUSTEES' ASSOCIATION

Mr. Nyitrai: I am Ernie Nyitrai, the executive director of the Ontario Separate School Trustees' Association.

Mrs. Moseley-Williams: Betty Moseley-Williams, first vice-president of the Ontario Separate School Trustees' Association.

Mr. Sherlock: Jim Sherlock, past president of the Ontario Separate School Trustees' Association.

Mr. Lauwers: My name is Peter Lauwers and I am counsel to the association.

Mr. Chairman: If you would please begin.

Mr. Sherlock: We apologize that we have not been able to make our brief available to the committee in advance. One reason for that is that we had representatives sitting in on the hearings in Ottawa in order that we could listen, consider and reflect on some of those submissions in our brief. It is a very lengthy brief. We do not intend to read it all into the record. However, there are some critical passages that we would like to read in, and I would like to get right on with that.

Accompanying the brief which we have presented to you is a booklet entitled Catholic Education and Separate School Boards in Ontario, published by the Completion Office—Separate Schools, and another booklet containing the

working paper on the report of the Ottawa-Carleton French-Language Education Advisory Committee, dated April 27, 1987, together with correspondence between our association and the Minister of Education (Mr. Ward).

The documents demonstrate that the constitutional question which lies at the heart of Bill 109 is difficult and complex and is rooted in a concept of education that may be unfamiliar to you and the committee. We leave you to read through this material at your own convenience but urge you strongly to do so before completing your task. In this oral presentation we intend to concentrate on the constitutional issue, which has been referred to by other parties in presenting their views to you.

The basic position of OSSTA is found on page 6 of the brief, and we would refer you to the middle of the page.

OSSTA believes that francophone Roman Catholics in Ottawa-Carleton are entitled to establish their own francophone Roman Catholic separate school board under section 23 of the Canadian Charter of Rights and Freedoms and subsection 93(1) of the Constitution Act, 1867, and recommends that Bill 109 be amended to permit them to do so.

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OSSTA must also recognize the concerns of francophones in Ottawa-Carleton who are public school supporters. We believe that their interests can be served through a free-standing francophone board of education, or the model adopted for the governance of French-language public school education in Metropolitan Toronto. Alternatively, Bill 75 could continue to apply to the public boards of education in Ottawa-Carleton.

OSSTA recommends the adoption of one of these alternatives in preference to the model proposed in Bill 109. In order to facilitate co-operation between the resulting francophone school boards, OSSTA also recommends that those provisions in the Education Act permitting agreements between boards be liberalized to permit the proposed francophone board of education to collaborate with the proposed francophone Roman Catholic separate school board.

We believe that Bill 109 is unconstitutional. Before discussing the question of constitutionality in detail, it may be helpful if members have an opportunity to look in the original language at what was guaranteed by section 93 of the Constitution. Please refer to page 9, starting at the last paragraph.

Section 93 of the Constitution Act gave constitutional weight to the provisions of the Scott Act. Under sections 2 and 3 of the Scott Act, Roman Catholics had the right to establish a separate school and to elect a board of trustees "for the management of the same," which under section 4 became a body corporate.

Section 7 of the Scott Act provided, "The trustees of separate schools forming a body corporate under this act...shall have all the powers in respect of separate schools, that the trustees of common schools have and possess under the provisions of the act relating to common schools."

The act referred to was the Common Schools Act, 1859, which provided in section 79: "It shall be the duty...

"4. To take possession of all common school property, and to accept and hold as a corporation all property acquired or given for common school purposes....

"5. To manage or dispose of such property, and all moneys or income for common school purposes;...

"7. To do whatever they may judge expedient with regard to purchasing or renting school sites and premises; building, repairing, furnishing, warming and keeping in order the school houses and appendages, lands, enclosures and moveable property; for procuring suitable apparatus and textbooks and for establishing and maintaining school libraries;

"8. To determine (a) the number, sites, kind and description of schools to be established and maintained in the city, town or village; also (b) the teacher or teachers to be employed; the terms of employing them; the amount of their remuneration, and the duties which they are to perform."

These sections were intended to do no less than give the Roman Catholic separate school boards complete autonomy in the administration of their schools and in the provision of education to the children of ratepayers. The starting point for any analysis of section 93 of the Constitution and section 23 of the Charter must be the decision of the Ontario Court of Appeal in the minority languages rights reference. In that decision, starting on page 11, second paragraph, the court demonstrated its sensitive understanding of the relationship between the administrative structure of separate school boards and the purpose for their existence:

"The province's power to regulate is, however limited by the constitutional stipulation in subsection 93(1) that it must not 'prejudicially affect' the rights and privileges of Roman Catholics with respect to denominational schools. These rights and privileges include the large measure of autonomy in the control and management of their schools which Roman Catholics enjoyed at Confederation. But they involve more than the administrative structure, which, in itself, is intended only to be the means of preserving and fostering the religious and other values of denominational education."

Continuing at the bottom, the court was careful to note:

"The application of minority language educational rights to the existing institutional framework prescribed for denominational education by the Education Act would not infringe upon or prejudicially affect any established denominational rights."

We want to emphasize the court's reference to the terms "existing institutional framework."

Continuing on page 12, the status of the Roman Catholic sector: Bill 109 does not honour the "existing institutional framework." The Roman Catholic sector of the French-language school board is not a Roman Catholic separate school board.

Continuing below, the French-language school board and the sectors form a new structure that has no precedent in the system of education in Ontario. The Minister of Education recognized this when he moved second reading of Bill 109: "To all intents and purposes, members will realize that we are creating not only a new school board but a new structure within the Ontario school system."

Bill 109 steps outside the "existing institutional framework" and, we believe, beyond the approval of the Court of Appeal in the minority-language education rights reference.

The Legislative Assembly of Ontario is constitutionally unable to establish a structure for the governance of Roman Catholic schools at the elementary and secondary levels in Ontario for either francophones or anglophones that is not a Roman Catholic separate school board. OSSTA believes that any structure for the governance of francophone Roman Catholic schools other than an autonomous francophone separate school board is constitutionally inadequate and would create a dangerous precedent for Catholic education in Ontario for both francophones and anglophones.

In item 4 we deal with the concept of dependency. OSSTA's difficulty with the combined board model as both philosophical and practical. The model creates a dependency structure from the policy viewpoint and from the practical viewpoint. From the policy viewpoint, the model crosses a very important line between delegation of a policymaking function of the board, which is not constitutionally permissible, and the delegation of the execution of board policy, which is permissible.

It must be realized that the right in subsection 93(1) of the Constitution belongs to Roman Catholic electors and not to the trustees themselves. The right is to elect from among their number trustees who constitute a separate school board which have and will exercise the powers given by the Scott act, 1863, to ensure that Catholic education is provided in schools operated by the board.

The trustees and the board, with their respective powers and duties, are part of the "means" by which the purpose of subsection 93(1) is accomplished. As such, they could not collectively delegate their power to others who are not under their direct control. In short, for Roman Catholic electors, the principle that an authority cannot delegate power is elevated to a constitutional protection by subsection 93(1).

The kind of delegation contemplated by Bill 109 is plenary in nature. Were authority delegated, the Catholic trustees would lose control over the manner in which it might be exercised. The new decision-makers, a group comprising both Catholic and public school trustees, would be free to exercise that authority subject only to the limitations in the legislation.

Consider the example of transportation policy. Transportation is a crucial area for separate school boards because it is used to overcome locational disadvantages and to permit the concentration of services in more economical units. The availability and the routing of transportation services are used by separate school boards to attract and serve pupils who might not otherwise obtain a Catholic education.

If the authority to set transportation policy were delegated to the full board, then it is possible that the availability and routing of certain transportation services would not be acceptable to a majority of the Catholic sector but would none the less be implemented by the full board. The result could be a transfer of students whose needs were not met from the Roman Catholic sector to the public sector.

From a practical viewpoint, the same result could occur because of the interdependencies which the combined structure creates. What happens, for example, where, in the give and take, the full board approves a budget under section 40 which does not allocate sufficient funds for the kind of transportation program which the Catholic sector has specified?

These interdependencies could also be abused. For example, responsibility over curriculum is exclusively given to the sectors and may not be delegated to the full board. Nothing would or should prevent the sectors from collaborating on the development of curriculum on a voluntary basis as school boards do now.

However, as the publication Catholic Education illustrates on page 5 to 8, the Catholic sector may choose not to collaborate in the development of curriculum in a particular subject matter, believing it to be so denominational in nature that collaboration would not be fruitful.

Public sector trustees could object to this decision and, combined with a few Catholic trustees who honestly felt that the denominational nature of the curriculum would not be compromised and who did not agree with the decision of the sector, could use their collective authority over other matters—for example, transportation, building maintenance or administrative support services—to attempt to influence the Catholic sector to collaborate on curriculum.

This example is an extreme one. In truth, the process is likely to be much more subtle, involving shifting alliances of trustees and negotiations over many matters. The dependency structure makes everything, even traditionally denominational matters, bargainable, thereby undermining sectoral autonomy.

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Although one expects that authority would be exercised in good faith, such an expectation may prove to be unrealistic. Experience under Bill 75 has provided occasional examples of difficult situations for francophone trustees and also for anglophone trustees. Neither the dispute resolution process nor a court action are practical solutions.

Apart from these major issues of principle, Bill 109 is constitutionally doubtful on a number of specific grounds, as will be detailed in the second part of the brief.

However, we do want to deal with the risk to francophone school governance in Ottawa-Carleton and a proposal. If, as the Ontario Secondary School Trustees' Association submits, Bill 109 is constitutionally vulnerable, then francophone school governance in Ottawa-Carleton in the form established by the bill is at particular risk. We say this because no part of Bill 109 is severable. It creates a unitary structure and its provisions are closely interdependent.

Unitary structure: Although there are three entities forming part of the French-language board, being the two sectors and the full board, Bill 109 essentially creates a unitary structure. Juridically the sectors have no independent existence. They are operated for the French-language board. Consequently, if the constitutionality of part of this unitary structure is successfully challenged, the entire French-language board must fall.

Continuing in the last paragraph, much of Bill 109 is devoted to stipulating which provisions of the Education Act apply to each sector and to the full board, and to what extent. The result is so complex and interrelated that a court would be unable, as a practical matter, to sever those provisions of Bill 109 which are constitutionally valid from those which are not. The successful challenge of a provision of Bill 109 on constitutional grounds would invalidate the entire bill.

In the absence of the operation of Bill 75 in Ottawa-Carleton, the results of a successful constitutional challenge to the structure of the French-language school board or to the provisions of Bill 109 would be the destruction of francophone school governance in Ottawa-Carleton, and chaos.

OSSTA supports francophone school governance in Ottawa-Carleton in the form of wholly autonomous Roman Catholic and public francophone school boards but is strongly opposed to the model of a combined school board on constitutional grounds.

The government of Ontario may insist on proceeding with a combined-board model for Ottawa-Carleton despite our belief that it is unconstitutional. If so, there is a way to ensure that constitutionally acceptable francophone school governance in Ottawa-Carleton, in the form of wholly autonomous public and separate francophone boards, would survive a challenge to Bill 109. Bill 109 could be amended to replace the sectors with full-fledged francophone school boards, one public and one separate. Despite OSSTA's opposition, the allocation of and the ability to transfer areas of jurisdiction in section 4 of the Bill could be retained, and the provisions dealing with the central structure could be made severable from the rest of the bill.

If a court later found the structure to be unconstitutional, as OSSTA believes it would, the central structure could be removed, leaving the remaining francophone public and separate boards to carry on their responsibilities under the Education Act, consistent with subsection 93(1) of the Constitution Act and section 23 of the charter, without a disruption of education.

Mr. Chairman, the balance of our brief deals with specific matters of concern if Bill 109 is passed in its present form. I would now like to refer to Mrs. Betty Moseley-Williams to read the conclusions of our brief.

Mrs. Moseley-Williams: In the conclusions—

Mr. Chairman: By the way, we will certainly use the entire brief and appendices and we are grateful to you for them, but we would be glad to have pages 19 onwards read into the record if you wish—without your reading them, I mean. We can have them read in.

Mr. Sherlock: Thank you very much.

Mr. Chairman: Are there any questions? Dalton McGuinty.

Mr. Sherlock: Sorry, Mr. Chairman, we have not finished yet.

Mr. Chairman: I am sorry about that.

Mr. Sherlock: We just wanted to read the conclusions.

Mr. Chairman: Very good.

Mrs. Mosely-Williams: The conclusions are found on page 34.

Bill 109 assumes, first, that it is possible to divide all of the powers of the Roman Catholic separate school board into two groups—those that are denominational in nature and those that are not—and, second, that those powers which are not denominational can be removed from the sole authority of the Roman Catholic separate school board and given to another decision-making

body, on the theory that to do so would not prejudicially affect any right or privilege with respect to denominational schools.

As noted above, the Scott Act was a prescription for the complete autonomy of Roman Catholic separate school boards. The vision was that the whole was greater than the sum of its parts. We can look to no higher authority for that proposition than the Supreme Court of Canada, which approved the following analysis of subsection 93(1):

"...the ultimate aim of the section is a religious one and that aim was undoubtedly given constitutional form. The question remains whether only that aim was so treated, or whether certain concrete means of achieving it were as well, namely, a number of powers and administrative devices to ensure that the denominational status of education would be respected and maintained in practice. There is also no doubt of the answer of this question: constitutional form was also given to a number of means of achieving the result, and the wording of section 93 itself seems clear in this regard, since it speaks of any 'right or privilege with respect to denominational schools' rather than referring merely to 'denominational schools'.

"It should be noted that in themselves, and viewed in isolation, these means are not necessarily religious in nature, for they may include financial powers, the power to hire teachers and so on; however, such means should still be related to the denominational status of education and connected directly with maintaining it."

Bill 109 does not honour the concept of autonomy envisioned by the Scott Act. In this respect, Bill 109 is an unprecedented piece of legislation in the history of Ontario. Put shortly, the premise of Bill 109, that autonomy is divisible, is mistaken and the bill is unconstitutional.

We believe that voluntary co-operation between school boards should be encouraged. Many separate and public boards now engage in co-operative activities to their great mutual benefit and the same would undoubtedly occur between francophone school boards to reflect their shared culture. But there is a fundamental difference between the ability of equals to co-operate on a voluntary basis and the dependency structure created by Bill 109.

Further, OSSTA believes that Bill 109 is unconstitutional because it fails to honour the right of francophone Roman Catholics in Ottawa-Carleton to their own autonomous Roman Catholic separate school board.

Finally, the discussion in part II of this brief shows that some of the specific deficiencies in Bill 109 are fatal to the constitutionality of the proposed model in themselves and, taken together, they are cumulatively fatal.

Mr. Sherlock: We tried to leave about a third of our allocated time for questions. We appreciate that this brief and the related documents are a very heavy reading assignment. We would be happy to entertain whatever questions the members have now or even to come back if necessary.

Mr. Chairman: Mr. Sherlock, Ms. Moseley-Williams, I thank you and I am sorry, I was not cutting you off out of lack of interest. I was simply trying to be organized. As you heard at the very beginning, the constitutionality question is something we have been trying to address. This is certainly an interesting contribution to that, so I apologize, Ms. Moseley-Williams.

Mr. McGuinty: I want to thank our guests for their presentation and for what I personally consider to be a very compelling and very convincing statement. As the chairman has said, I would ask my colleagues and I would enjoin them to read the backup material as well that you have very thoughtfully supplied because I think that is indispensable.

One query that is going to be raised has to do with to what extent the concern that you have expressed is shared by those who are mainly involved in this, and that is members of the francophone community. With all the concerns we have had—and we have had many, as you know—in the two days we were in Ottawa. I have talked to many people over the last 15 years in the Ottawa area, members of the francophone community. They are concerned. I am not implying that if you do not get this concern from the francophone community, the validity of your position is thereby somehow less valid.

Could you comment on that for us, sir?

Mr. Sherlock: Our association has consistently supported the principle of the right of governance of francophones of their own boards. The dilemma that we have is that we see the bill as presently constituted recommending a combined board as being unconstitutional. That becomes a concern for anglophones as well as francophones because of the fact that the government has under consideration the report of the Macdonald commission.

Recommendations 2 and 3 of the Macdonald commission propose combined school boards for all boards in the province. We understand it is under interministerial study and that the government may be near to making some recommendations. The fact that there is an outstanding recommendation for this type of organization across the province gives us the dilemma that while we support their right to governance, we find it unconstitutional in this particular form.

Mr. McGuinty: So your concern would be, notwithstanding the apparent lack of concern of the francophone community with this aspect, a dangerous precedent would thereby be established which in the future could threaten the separate school system as it exists.

Mr. Sherlock: Yes.

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Mr. Tatham: I have just a general question. I enjoyed that comment on page 35 on voluntary co-operation between school boards. Earlier on there was talk about the cost of transportation. Does this take place in the province now? Do separate school people and public school people work together on transportation?

Mr. Sherlock: It is my understanding that many boards have combined routes. It is not feasible to combine all routes, but because of the high cost of transportation, many boards are presently voluntarily co-operating in that area.

Mr. Tatham: Is this a general trend or is this something you would encourage?

Mr. Sherlock: We certainly encourage it and, as I say, I think it is fairly commonplace.

Mr. Tatham: All right. Supposing the government went along with what you want to do on this bill, what difference is there in costs?

Mr. Sherlock: I am not sure I understand your question.

Mr. Tatham: In other words, you are not in favour of Bill 109 as set out; so if it went your way, what would the difference be in costs.

Mr. Sherlock: I do not see any significant difference in costs.

Mr. Tatham: Do you think they would be about the same?

Mr. Sherlock: I would think that through voluntary co-operation the costs would be approximately the same. The point is made that, without the third level of government, there could be a saving.

Mr. Tatham: Is there a benefit, financially, to the taxpayer, or is it going to be more costly?

Mr. Sherlock: I think there is a possibility of a benefit to the taxpayer in eliminating the second tier of government.

Mr. Campbell: I am just wondering, in the light of your presentation, do you have some recommended amendments that you would see put forward in the bill or like to see discussed in the bill, given your presentation on, basically, the constitutionality of the bill, but also other aspects that we heard last week in Ottawa, for example, that we may because of the time situation that you are in want to see addressed.

Mr. Sherlock: I think we have highlighted some. Perhaps with respect to amendments, I could ask our counsel to comment on that.

Mr. Lauwers: The second half of the brief contains a number of suggested amendments and they are pretty close to being legislative in form, in terms of the suggestions. As for the proposal that Mr. Sherlock just related to you about converting the sectors into boards, we do not have any language that would accomplish that at present.

Mr. Campbell: I appreciate that we have got part of it, but I was referring to the others ones. When you are saying that, does your list of recommendations that are found in your brief make up your proposed amended, in whatever language, kind of target that you are looking at?

Mr. Sherlock: Effectively, yes.

Mr. Campbell: Effectively? If I might, I will just explore something else along this line. Hypothetically, if it was brought out in your school boards, there would be the possibility of not one but two extra school boards, given the constitutionality, if we were to explore that. Given the change in composition of your Ottawa board and your Carleton board, would there be some thought given to looking at a region-wide separate anglophone board? I do not want to put you on the spot to reply, but I would like to explore the feelings, if I might.

Mr. Sherlock: As a provincial organization, I do not think we can comment. I think that is really a local issue.

Mr. Campbell: Generally, if there were other boards proposed in a similar situation, given the constitutionality and given your concerns under the constitutional aspects of this—

Mr. Sherlock: As a provincial organization, we have consistently tried to avoid becoming involved in local issues. That is why we focus on what we feel is the provincial concern, with the main focus being on the constitutionality of Bill 109.

Mr. Campbell: To clarify then, you are looking at this from a potentially precedent-setting nature rather than as a local issue, not to put words in your mouth, but if I might try to get a sense of where you are coming from.

Mr. Sherlock: In introducing it in the House, the Minister of Education referred to the fact that Bill 109 represents a completely new structure. It is that new structure that we feel is constitutional and it is that new structure that is being recommended in the Macdonald commission, potentially for all boards in the province. I think that is really the basis of our concern.

Mr. Jackson: Thank you, Mr. Sherlock. You have given us a tremendous amount of material to digest, well in advance of what we hope will be the presence of the Attorney General (Mr. Scott), whose grandfather you have quoted extensively in your brief, whereupon he might be given an opportunity to clarify not only his government's position on the constitutionality as you raise it but what his grandfather envisaged so many years ago for Catholic educators in this province.

On that point, are you prepared to state that you wish this bill to be deferred until such time as the constitutional question has been resolved satisfactorily? Perhaps I missed it in the brief. That is my first question.

Mr. Sherlock: No. At no time have we recommended a delay of the bill. We have consistently commented, and one of the attached appendages of material you have is all of our correspondence with Mr. Conway and Mr. Ward with respect to our consistent position. Certainly, that is a concern of ours, but we have not been recommending that the bill be delayed.

Mr. Jackson: If I can ask you then to speculate, if the bill is passed in its present form, have you or your organization stated publicly your willingness to test the constitutionality of it in the courts?

Mr. Sherlock: No, we have not. We are waiting. As far as that particular decision, we would only review that possibility when we saw the final form of the bill.

Mr. Jackson: One of the deputants in Ottawa, or two actually, made reference to the list of those items enumerated which were the exclusive jurisdiction of the Roman Catholic sector. Reference was made to cafeterias and the suggestion that they may not be exclusive; they might be joint. Do you wish to comment on that recommendation to this committee?

Mr. Sherlock: I have no specific comment on cafeterias.

Mr. Jackson: OK. I notice in your recommendations, if I can find it—recommendation 4—that learning materials and instructional materials remain on the list of items which would be within the exclusive jurisdiction

and not subject to a majority vote adjustment. What is your position on resource centres, in other words, where these materials are housed?

Mr. Sherlock: I would think that is another one of the things where we would want the Roman Catholic sector to become a Roman Catholic board that would have the power to make that kind of decision. Again, we see in those areas the possibility of co-operation. I think you are well aware that your former board and my existing board in Halton co-operate a great deal in that area. There is all kinds of voluntary co-operation going on. We do not want to give up constitutional powers in order to facilitate that for a third level of governance.

1700

Mr. Jackson: I am not going to argue with you that two boards may not always enjoy such co-operative trustees. We did co-operate extensively through Bill 30 and now through Bill 109. However, that does not help me with my question. Quoting from the bill, item 4 states, "the following matters are within the exclusive jurisdiction..." and it includes providing instructional and learning materials. I have yet to find out what that exactly means.

I understand that you would like two separate circular 14s—I can understand that—with what is the approved texts which would be available. I presume from that that there would be two sets of approved texts, one for the public francophone and one for the Roman Catholic francophone curriculum.

Do you interpret that to include resource centres? I am having difficulty, if we require separate cafeterias but we do not necessarily require separate resource centres where materials from both separate circular 14 lists will be present and available for the students: I am just trying to further clarify because I know this is going to come up at some point.

Mr. Sherlock: I am going to ask our legal counsel, Mr. Lauwers, to comment on that.

Mr. Lauwers: I do not think the concept of learning centres or resource centres is within this particular provision of the bill. I would have thought the resource centre is something the sectors could collaborate on creating if they wish, just like any boards could do and some boards have already done. As for cafeterias, the question of shared cafeterias is another issue. Most of the time, I suspect, the instruction units would be independent and the cafeterias would be in different schools. I think it was more to do with the administration of cafeterias than it was to do with the actual cafeterias physically. That issue came up in Ottawa.

Mr. Jackson: Then I need a further clarification of what I thought I was listening to on the issue of cafeterias.

Mr. Lauwers: The translation was a little difficult for me to follow from time to time, too, so maybe you have it right and I have it wrong.

Mr. Beer: After this bill, no one will be able to eat.

Mr. Jackson: Perhaps the chair can assist by requesting that those two points I have just raised be clarified in terms of what the ministry understands is the case on those two. I do not require it right at the moment; I would be satisfied that the ministry be asked to clarify on those two points since I am generally confused and there is some specific confusion on the point.

Mr. Chairman: Perhaps at the end of the meeting we will clarify that. We we will be glad to try to do it.

Mr. Beer: I apologize that I was not able to be here at the beginning of your presentation, but certainly with all the various documentation, I will go through it in more detail than I have been able to do so far. I want to ask you just one question that follows on from what Mr. Campbell was asking you about, just to make sure I understand with respect to the constitutionality. If I have understood correctly, your concern about the legislation is, if you like, that it sets a precedent or may set a precedent for other kinds of things.

As I understand the argument with respect to the francophone schools and developing the board in this way, it is because we have the interplay of not only section 93 but also section 23 from the charter and the relationship of linguistic rights and confessional or denominational rights. One of my problems here is in trying to see how this could affect the English separate schools or the other separate schools in areas where there are few or no French-language schools in bringing about forced amalgamations or some kind of structure that was set up, perhaps to attempt to save money or whatever. You made reference to that, and I just have not seen it more clearly. As I say, the francophone question I can see because of the Charter of Rights and Freedoms. There are two things at work here in terms of the British North America Act and the charter. How does that then relate as well to other separate schools and the possibility of a threat there?

Mr. Sherlock: I am sorry, Mr. Beer. I am not sure when you came in. I was reading. To repeat myself, the government has under consideration the Macdonald commission, which in recommendations 2 and 3 recommends combined boards throughout the province.

The past president of our association wrote a minority dissent, which forms part of the commission's report. That is the dilemma we have. We support the francophones' wish for governance of their own schools, but we find the combined board model unconstitutional. We have consistently in our response to the Macdonald commission indicated that we found that to be unconstitutional. Basically, we are simply being consistent that this new Bill 109 is unconstitutional with respect to school board structure, in our opinion.

Mr. Beer: Okay. I understand that. At least I think I understand that line of argument with respect to the recommendations from the Macdonald commission. But in the specific context of Bill 109, it just seems to me that the different element that is here, and would not be in play in the other case, is that here there is the charter. It is the interplay of section 23 and section 93, if I follow correctly, that has resulted in this model being brought forward for the francophone schools. Presumably, the officials in the Ministry of the Attorney General have said in their view this is constitutional.

I just want to try to clarify what then is the perceived threat to the other schools. On the Macdonald commission, I agree and I know those recommendations. But I am thinking here purely from the perspective of the francophone aspect of this.

Mr. Sherlock: I would like to call on Mr. Lauwers to comment on this.

Mr. Lauwers: Mr. Beer, if you could turn to page 7 of the brief and if you look at what the Ontario Court of Appeal said there on the minority

language rights reference, it said: "As we view the charter, it grants supporters of denominational schools a right in addition to those granted them in 1867 by section 93. They are now entitled"—effectively to something extra—"to denominational education in either the minority or majority language." They went on, "In our opinion, section 23 and section 93 are compatible and capable of living and operating in harmony with one another."

The brief goes on, "In holding that denominational rights and minority language education rights are cumulative and do not conflict, the Court of Appeal was dividing the linguistic group along denominational lines." I will take you to the next reference in a minute. "However, the distinction between denominational and nondenominational education and the 'existing institutional framework' must be maintained in any legislation to implement section 23 rights."

That is what the court said. If you go to page 11, at the bottom of the page, you will find that reference. "The application of minority language educational rights to the existing institutional framework prescribed for denominational education by the Education Act would not infringe upon or prejudicially affect any established denominational rights."

The point that you raised about what impact section 23 has is the critical question. Section 23, in this decision and others of the same sort, does not allow anybody to avoid the subsection 93(1) guarantee.

The subsection 93(1) guarantee, we say, is for wholly autonomous separate school boards. What section 23 then allows you to do, as the Court of Appeal held, is to take an existing separate school board which has francophones and nonfrancophones, or anglophones, together and split them in half. You take that board and you subdivide it. You now have a new Roman Catholic separate school board for francophones and another for anglophones. That is the way those two rights intersect. •

You cannot take the right, though, and change the nature of subsection 93(1) in the way that Bill 109 does. That is what makes it unconstitutional. In other words, the language dimension is not a relevant consideration when you are looking at subsection 93(1).

Mr. Beer: I have one last point. The existing institutional framework, you would argue, must be maintained in the structure.

Mr. Lauwers: I want to be careful when I say "existing institutional framework". I do not mean an existing board. We fully understand that if you take an existing board and you divide it in half along linguistic lines, it is the institutional framework that you preserve when you do that.

1710

Mr. Tatham: I was away. I was not up in Ottawa. I had other things to do. I am sorry. What are you suggesting then? What would you do if you had the ability to do it?

Mr. Sherlock: Basically, we would like to see, as we have consistently communicated to the ministers of education, two separate boards.

Mr. Tatham: You would like to see francophone under separate schools and then francophone under public schools?

Mr. Sherlock: Yes. On page 6 of the brief, there is a second letter that we wrote to the minister. "We continue to support the aspirations of francophones for self-governance in education, but in the form of wholly autonomous school boards, separate and public." That has been our consistent position. To answer your question, if we could write the legislation, that is how we would write it.

Mr. Tatham: Thank you.

Mr. Chairman: I would like to move on. We do have another delegation waiting. Mr. Lauwers, Mrs. Moseley-Williams and Mr. Sherlock, we do appreciate it. The Ontario Separate School Trustees' Association's position has been very well put. Thank you very much indeed.

Could we ask the next delegation to come forward, representing the Association of Large School Boards in Ontario? We have Ms. Fiona Nelson, who is the president, I believe.

I understand, Ms. Nelson, you have notes and there is no written brief.

Ms. Nelson: That is correct, Mr. Chairman. I can tidy them up and give them to you later if that would be helpful.

Mr. Chairman: I must say we would be most grateful if you would. I also would be grateful if you could say your name clearly and your affiliation for the benefit of the translators, please.

ASSOCIATION OF LARGE SCHOOL BOARDS IN ONTARIO

Ms. Nelson: My name is Fiona Nelson. I am the president of the Association of Large School Boards in Ontario. We appreciate the opportunity to comment on Bill 109 to the committee.

The Association of Large School Boards in Ontario represents 15 of the largest public boards in this province. Together, we are responsible for providing elementary and secondary education for about 800,000 children and adults, including both the Ottawa and Carleton public boards.

Our presentation will address three issues primarily: the self-governance of francophone education, the rules for election of francophone school trustees and the adequacy of the funding arrangements.

Our association supports the fundamental principle that local schools should be governed locally and we support the application of this principle in terms of local francophone schools, which should be governed locally by francophones. We see this as the principle of local self-determination. We believe it is appropriate for the government and the Legislature of Ontario to facilitate arrangements for local self-governance of francophone education, upon the expressed request of the communities involved and their elected representatives.

On the other hand, the government and the Legislature should move with extreme caution when encountering expressions of concern about these fundamentals.

In watching and listening to the proceedings of this committee on Bill 109, you have received a series of mixed messages on key issues, and we would recommend that you make haste very slowly. As it is, Bill 109 did not invent

the concept of self-governance of francophone education. That concept was first enacted legislatively in Bill 75, at least in terms of recent Ontario history.

When the governing units established in Bill 75 themselves asked for further consideration of Bill 109; in some cases, asked that the bill not be implemented for this election; and in one case, suggested that a separate Roman Catholic francophone board is an alternative, then to proceed with this bill as it is runs a serious risk of being and being seen as insensitive to local opinions and local options.

We would recommend that you defer further consideration of this bill, at least until the constitutional questions have been settled.

On the election of school trustees, another dimension of local self-government that concerns us is the rules on how school trustees will be elected. Bill 125, which, I believe, went through committee of the whole House this afternoon and gets third reading later in the week, has had a lot of changes made to it when compared to the original version in Bill 75, and they reflect a growing appreciation by this government of the role of school boards as decision-makers who can be much more sensitive to local concerns and aspirations.

We commend the Minister of Education (Mr. Ward) for those changes, which provide some say for each local board in determining the total number of school trustees to be elected and in allowing for an alternative version of distribution to take into account interested areas of low population. We ask that this committee, when it looks at those changes in Bill 125, apply them to Bill 109 so that the school trustees to be elected under Bill 109 will have the same rights and responsibilities as every other school board in the province.

It does not seem appropriate to us that the proposed French-language school board of Ottawa-Carleton should have fewer rights than other school boards in the province. We recommend that this committee amend Bill 109 in this regard so that the separate and public sectors each have an independent right to vary their own total number of trustees and the distribution thereof.

My final point is on the adequacy of the funding arrangements under Bill 109. The Association of Large School Boards in Ontario is very concerned that Bill 109, as it is, constitutes a preliminary step and a precedent towards a massive provincial takeover, a tax grab if you like, which will see resources taken away from local schools and, therefore, the effective right to make decisions locally will be undermined.

It is our understanding that the cabinet submission from the Minister of Education on Bill 109 called for a version of regional pooling of commercial and industrial assessment in Ottawa-Carleton as a means of providing a tax base to the proposed French board. The cabinet submission recommended that the francophone share of residential and farm assessment be deemed to be the francophone share of commercial and industrial assessment. It is our further understanding that cabinet did not accept this and asked the Minister of Education to come back with the big picture on the fundamental issues in school financing throughout the province.

As a result, the interim funding arrangements proposed in this bill were devised. This will have the effect of stripping the proposed boards of any real financial autonomy. It is the same with the two sectors within that board. No other board in this province is restricted to this extent.

Our remedy to this would be that the provincial government enact as quickly as possible the promise that it made to have 60-40 funding of education in this province. Then we would have not just equity at inadequate levels of funding but we would have adequacy of funding to both those sectors.

Those are the three points we want to bring to your attention. I would be happy to answer any questions.

Mr. Chairman: Thank you very much indeed.

Mr. Jackson: I have a point of clarification, just to be helpful. In the presentation, Ms. Nelson was referring to 60 per cent as being the contribution by the provincial government and not the 40 per cent, which they are currently receiving.

Mr. Chairman: Thank you for the clarification.

Mr. Jackson: I just want to clarify the record that when we talk 60-40, a lot of Liberals nod, and I want them to understand that is what we want to go back to.

Mr. Beer: We would be remiss in not thanking Mr. Jackson for that financial lesson. I will not go into earlier periods or other governments. I do not think we need to raise any of those questions at this time.

I suppose it is the problem we have often when we are bringing in something that is quite new, legislation of this kind, which it is fair to say is creating a new approach to, in this case, French-language education. In some cases—for example, the funding issue, which in terms of what is stated in the bill is not perhaps as clear and precise as one would like in terms of other existing forms; the concept of the sectors is new—we know we have an agreement on principle.

Especially in the development of French-language education for francophones in this province and in the development of French-language governance, if we go back 20 or 30 years, we see an evolution. In a sense, at each point, we all know that is not the last stop and that is really not perfect, but we start with advisory committees and then we go to committees that become councils and have a bit more real power. In this case we have a hybrid, if you like, a new approach.

1720

I guess it is the question of at what point do you say, "Look, we have enough here to proceed. In effect, we recognize that perhaps over the next several years, working together with the major groups involved in education, the teachers, the trustees and so on, we will, as we have with other legislation dealing with francophone education, probably be bringing forward other changes.

I am wrestling with what I think are very valid points that have been brought up by yourself, by the previous speakers, by those we heard in Ottawa, and yet also recognizing, I suppose, the old statement that there is a point in time where you kind of say, "OK, let's go." This is when we want to get that structure in place, which is perhaps not at the 100 per cent level, but we are getting close enough that if we put it in, through the working of it, we can bring about some of the improvements we seek.

I guess that is a long question or a long reflection, but as one, in your own case, who has been involved with school boards for a long period of time and has seen many developments and growth, I just wonder how you view it in that perspective of how much time one should take in order to sort of get it perfectly right, as opposed to saying, "It may not be exactly what we want, but it is close enough and we can really deal with the other issues that will evolve."

Ms. Nelson: I think there is certainly a valid point in your question, and that is that to meet what appear to be new situations, you need new models.

The thing that concerns me is that there are a couple of things in this new model that I am not sure need to be there, that in fact are probably unnecessary complications, if you like. I think the funding model is one and I think the election of the school trustees, in a different way, is certainly another. I am unable to see why they should not have the same powers in this board to vary their numbers as other boards in the province do. It would seem to me that there might be some areas of real irritation that could be removed if that right were given.

By the same token, it seems to me that if we are going to say this new board is going to provide a good program to children, there has to be a better funding arrangement in order for it to do that. As a new entity, I suspect it is going to want to try some things locally that will fit its local pattern, and that is best done if it has some control over its local funding. They are pretty well stripped of it, except for the residual residential part, and that, as we all know, is not where one gets the money to run school boards.

Mr. Beer: Are those then of such a nature that what you are saying is that we should slow down the process in order to accommodate that? Or are those things that if we go ahead with the bill, none the less, are matters that could be resolved over the next several years as that new board sort of gets its feet down and gets established in the community?

My concern here is that we have had a certain process, if you want to go back to the Mayo commission or whatever, where slowly but surely something begins to evolve. We reach a point where you then create a certain series of expectations about what is going to happen and then inevitably, I think, as one looks at the piece of legislation, one sees, "I like the principle and, I like a lot of these things here, but they didn't get this right," or, "I think we want to change that."

That is where, in my own mind, I try to measure off what I say are valid points, but ask whether we still need to move with the legislation in order to get it in place, while at the same time recognizing that we probably are going to have to come back to some of these issues.

Ms. Nelson: I certainly think, in terms of the two sectors within the board having the right to vary their numbers and allocate them at their own discretion, that could be a very simple amendment. You just make it consistent with Bill 125. The funding one is much more complicated and certainly the constitutional one is a huge one.

For that reason, we are concerned about rushing into this one. I realize expectations have been raised and that makes it extremely difficult to then slow down, but it does seem to me there are three levels of difficulty to the problems I have raised.

One is fairly simple, the funding one is more difficult and the constitutional one I do not have an answer for, but it does seem to me you get into an awful mess if you pass this bill and then you have some kind of constitutional interpretation that throws the whole thing into a cocked hat. So much for expectations. I think that one is one that would really make me pause. I am simply raising it because there seems to be such a disparity of opinion among the sectors in Ottawa-Carleton that I do not envy you your task in trying to solve that one to anyone's satisfaction.

Mr. Tatham: I thank you very much for your comments, Ms. Nelson. We will leave the constitutional situation to later days, but on this matter of funding, I have just a general question. Right across the province, is there fairness in terms of what money is being spent on students, say, in northern Ontario, western Ontario, eastern Ontario and Metropolitan Toronto? Are about the same dollars being spent?

Ms. Nelson: No. There are, in fact, very wide disparities among boards, related partly to the fact that the ways in which the grants and the ceilings are calculated are very badly out of date, based partly on the fact that there are local resources that vary quite widely and there are expectations and needs that vary quite widely. In fact, it might be reasonable for the amount per child to vary by \$1,000 or \$2,000 in certain jurisdictions because of the needs that are presented in those particular areas. I think there are an enormous number of variables in the funding area, but I think it is extremely important that we keep in mind the difference between adequacy of funding and equity of funding at inadequate levels.

That is simply the thing I wanted to point out and once again raise the interesting spectre of renegotiating the ceilings and grants in such a way that they reflect 60 per cent of the costs being provincially based and 40 per cent being locally based. I still think there could be enormous variations. I do not think there is any value to uniformity per se. Uniformity never means fairness. It just means simplicity of administration and that often produces great unfairness in the long run.

Mr. Tatham: Do you find, say, the child in a metropolitan area getting more dollars spent on him than, say, out in the rural areas?

Ms. Nelson: The problem is that these are usually average figures. You will find that a child may be having \$30,000 spent on him in a particular case because that is the need, and another child who has got very minimal needs requires the very minimum of spending and is doing quite well. The average is going to come out very high because there may be more of the high-need cases in a particular area. It is very hard for me to answer that question with any degree of specificity.

Mr. Tatham: With the children we are talking about, the francophone children now being educated, how much more money will we have to spend per child to educate them?

Ms. Nelson: I do not know how much more it would be but my assumption is that if they are going to be given the same range of options, if the needs in special education and decent primary programs and a variety of other things are going to be replicated in that system, presumably there are certainly going to be startup costs that are going to be greater. Some of those may be capital but I suspect a lot of them will be ordinary current expenditures. It may be that for the first little while they are going to need more just to get off and running. I do not know the actual dollar numbers, though. I am afraid I cannot help you there.

Mr. Campbell: I will stand down my questions at this point.

Mr. Jackson: I guess I will pass on mine for now. I will not burden Ms. Nelson.

Mr. Chairman: Ms. Nelson, thank you very much indeed.

Ms. Nelson: Thank you for the opportunity.

Mr. Chairman: We do appreciate it. If it is convenient to provide the notes, we would be most grateful.

Mr. Chairman: Gentlemen, if I might, before we conclude there are a few things I would like to say. First, for those who are still here other than ourselves, my understanding is that this meeting will be broadcast tomorrow, that is to say, Tuesday, May 31, in the morning and it will be repeated next Friday. The second thing I would like to repeat is that amendments can be translated and, for this bill and any others, we would be grateful if members would submit them.

The third thing has to do with Cam Jackson's request. The ministry lawyer has provided us with some information on it. As I understand it, Cam, your position is that this is something that should be provided by legal counsel here attending the committee. Would you care to address that point?

1730

Mr. Jackson: Thank you, Mr. Chairman. You did share with me the notes which were submitted from a member of the minister's staff, who is not a lawyer.

Mr. Chairman: Excuse me.

Mr. Jackson: I have examined those and, on the face of them, they raise further questions. It has pointed out the fact that it is normal and customary when dealing with a bill that a representative from the ministry be present in order to respond to the very types of questions I have raised.

At our public hearings in Ottawa, I was more than satisfied that the attendance of Yvonne O'Neill, the parliamentary assistant to the minister, was sufficient because she has an outstanding grasp of the elements of the bill. Her not being in attendance today has left us without that counsel. I would like, Mr. Chairman, if you could ensure that the government upholds its responsibility to assist this committee so that with questions of clarification about the substance of the bill, we can receive those in a timely and appropriate fashion.

As I say, Mrs. O'Neill has done an excellent job because she has been privy to many of the consultations to which we as MPPs are not privy, but it really is not helpful for us to have notes passed over by the minister's personal staff, whose legal and other grasp of the bill may be at variance with what our needs are. If you, as chair, could correct that, it would be appreciated. I am in no great hurry to get the clarifications, but it would be helpful as soon as possible.

Mr. Chairman: We will get you the clarification and we will see what we can do for tomorrow.

Gentlemen, the last thing I have here of an organizational nature is that another committee has asked us to consider giving up this room for a substantial part of or all of the next two weeks. If I might begin by sharing my views on that, it does seem to me that where we do have public hearings on this bill, which is extremely important, and Bill 107, where we are actually dealing with delegations, this is a very appropriate room. I am less sure when we get to clause by clause discussion. I wonder if you would care to comment on that. The question is whether we should give up the room. At the moment, we have it.

Mr. Jackson: Briefly, which committee requested this?

Mr. Chairman: The standing committee on resources development.

Mr. Jackson: What is the subject of their hearings?

Mr. Chairman: Workers' compensation.

Mr. McGuinty: What is the alternative to moving out?

Mr. Chairman: We would go to one of the other committee rooms.

Mr. Jackson: Are their presentations public?

Mr. Campbell: Just to clarify, I think with the process we are going through, we did make a certain commitment in Ottawa that they could follow, given that this was an Ottawa thing and that they could not be present. I think it is important to note that we did make a commitment in Ottawa that they would at least be able to follow by televised proceedings, however delayed and changed and what not.

Certainly, you have made announcements and I would be concerned that this process would be interrupted. If you were to tell me that there was another room with public access to television, I would not be as reluctant. But I think at this point, one of two things could happen: the other committee could reschedule its time for when this room is vacant or, alternatively, it could look at a period when we are not sitting, because we do not sit every day, and it could come in and use the room if somebody else was not using it. I suggest those as alternatives. I am concerned that we have made a commitment to the people of Ottawa-Carleton to publicly participate as much as possible.

Mr. Chairman: Are there any other comments? Leave it with me. If, for example, we are not using Thursday, I can mention that to them, but my present thought is that as far as public hearings are concerned, I will discuss it with them with a view to our retaining the room on those days, and I will report back to you tomorrow.

La prochaine réunion du Comité permanent portant sur le projet de loi 109 aura lieu dans cette salle demain, après la fin de la période des affaires courantes, c'est-à-dire vers 15h30.

Je répète le numéro de téléphone pour les personnes désirant avoir plus de renseignements. Il s'agit du (416) 965-6834.

La séance est levée.

The committee adjourned at 5:36 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON

TUESDAY, MAY 31, 1988

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)
VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)
Allen, Richard (Hamilton West NDP)
Campbell, Sterling (Sudbury L)
Cousens, W. Donald (Markham PC)
Jackson, Cameron (Burlington South PC)
Johnston, Richard F. (Scarborough West NDP)
McClelland, Carman (Brampton North L)
McGuinty, Dalton J. (Ottawa South L)
O'Neill, Yvonne (Ottawa-Rideau L)
Tatham, Charlie (Oxford L)

Substitution:

Beer, Charles (York North L) for Mr. Tatham

Also taking part:

Villeneuve, Noble (Stormont, Dundas and Glengarry PC)

Clerk: Carrozza, Franco

Staff:

Gardner, Dr. Robert J. L., Assistant Chief, Legislative Research Service

Witnesses:

From the Ontario English Catholic Teachers' Association:

Cooney, Jim, President
Kavanagh, J. Frank, General Secretary
Knott, Doug, Deputy General Secretary

Individual Presentation:

Matthews, Father Carl

From the Sudbury District Roman Catholic Separate School Board:

Montpellier, Roland, Chairman
Tremblay, Onésime, Director of Education and Secretary
Hammond, Robert, Superintendent of English Schools and Assistant Secretary

Du Conseil de l'enseignement en langue française, Conseil de l'éducation de
Sudbury:

St-Jean, Denise

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, May 31, 1988

The committee met at 3:42 p.m. in room 151.

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
(continued)

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON
(suite)

Consideration of Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Etude du projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

M. le Président: Mesdames et messieurs, bienvenue à une séance du Comité permanent des affaires sociales à l'égard du projet de loi 109, Loi sur le Conseil scolaire de langue française d'Ottawa-Carleton. Le Comité a tenu des audiences publiques à Ottawa la semaine dernière et ici, à Queen's Park, hier. Nous commencerons l'étude de la Loi 109 article par article le lundi 13 juin, à Queen's Park.

Ladies and gentlemen, welcome to a meeting of the standing committee on social development dealing with Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton. We held public hearings last week in Ottawa and here at Queen's Park yesterday. We will begin clause-by-clause consideration of Bill 109 here at Queen's Park on Monday, June 13.

Members of the committee, before we actually begin, we have a few housekeeping matters, if I might.

First of all, the letter to the House leaders concerning our work at the end of this session has been drafted and mentions the various legislative items that were discussed yesterday very briefly, and suggests that the committee be empowered to work as soon after the end of this session as possible. I think that was generally what was agreed.

I have no further information on the constitutionality question. You will remember we received one report yesterday; the others, I guess, are still coming.

As far as the schedule before us is concerned, I remind you that after today's hearings, Thursday is available, but at this point in time we have no delegations for Thursday, so it appears we will not be meeting Thursday.

Next Monday, which is June 6, we begin consideration of Bill 107, An Act to amend the Child and Family Services Act of 1984. We continue that work on Tuesday, June 7, and on Thursday, June 9. Then, as I just mentioned, the following Monday, which is June 13, we begin clause-by-clause consideration of Bill 109.

With respect to Bill 107, I again ask committee members that if there are interested parties they would like us to advise in connection with that important bill, we would of course be delighted to do so, and we have some already, I understand.

I also mention to members that amendments can be translated by legal counsel into French if they wish and I hope members will take advantage of that if they require translation for their amendments.

For the members of the public, this session on Bill 109 will be televised, I understand, in both French and English with a repeat of yesterday's session of this committee on the legislative channel this coming Friday, June 3.

Are there any questions or points about those matters?

Mr. R. F. Johnston: It is an ancillary matter that surrounds Bill 100, An Act to amend the Education Act, which will no doubt be referred to us tomorrow afternoon after a not very prolonged debate, I would imagine, in the Legislature. When we are looking at dates to deal with things, I think the presumption is that the Association of Municipalities of Ontario and perhaps one or two other groups may wish to come before the committee to raise their concerns with Bill 100, but it is the sort of thing we might be able to do in one day.

One of the things I might suggest is either that today we empower the steering committee to organize that or that we meet organizationally on Thursday briefly to determine whether we can do that on June 14 or whether we need to have two days to deal with the clause-by-clause from this bill or not.

Mrs. LeBourdais: When we were in Ottawa last week, there was some discussion about having in a sense a condensation of the various briefs and sort of a point-by-point of the key points that came forward. I am just wondering if that will be available and if so, when.

Mr. Chairman: I will ask our research officer to comment on that.

Dr. Gardner: We will be doing that as soon as possible. We have got all of the Ottawa ones and we are in the process of summarizing them now. We also summarize the stuff—this is what I am doing when I am here. I would imagine that mid-next week is about the best we can guarantee. We will do it as soon as we can. We will deliver the document to the chair and the clerk and they will arrange to have it distributed to all of your offices. I would think mid-next week.

Mr. Chairman: If I can go back to the Bill 100 point, Bill 100 was one of the bills that was mentioned yesterday. Mr. Johnston, it is my understanding, though, that we should anticipate at least two days of clause-by-clause. This was my understanding for this bill, the bill we have before us. Perhaps at the end of today's session, we could discuss that again briefly. Perhaps the steering committee could meet and we will decide what we will do with that. I had not realized, by the way, that it was envisaged we could do Bill 100 in a day.

Mr. R. F. Johnston: It is only a page or so long. There are 300 pages of amendments.

Mr. Jackson: Yesterday, there was a short reference by Mr. Reville to our business once we prorogue. Is it your intention to formalize that into a motion and if so, when and how soon, because I understand the House leaders are requesting all committees to report to determine.

Mr. Chairman: I just mentioned that we were formalizing it into a letter mentioning the various pieces of legislation which were discussed yesterday. Now, I would be quite glad if you would like that to become a motion. I was in the process of writing to the House leaders.

Mr. R. F. Johnston: For those of us who were not here yesterday, I would be happy to have some idea of what the content is.

Mr. Chairman: The draft has been sent upstairs. During the afternoon, we will get it and we will go through what is in the letter and we will convert that into a motion.

Mr. Beer: It includes an invitation to a party.

Mr. Jackson: Have we heard from Mr. Scott?

Mr. Chairman: No, I mentioned that there was no progress on the constitutional matter.

Our first delegation: If Mr. Cooney is here and would come forward, and any colleagues he might have from the Ontario English Catholic Teachers' Association, we would be grateful. Jim Cooney, I think, is the president. Gentlemen, before you begin, I would be grateful if you could state your names and your affiliations very clearly into the microphones, before you begin, for the benefit of Hansard and the translators.

1550

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

Mr. Cooney: I am Jim Cooney and I am the president. On my left is the general secretary of the Ontario English Catholic Teachers' Association, Reverend Frank Kavanagh, and on my right is the deputy general secretary of OECTA, Doug Knott.

Mr. Chairman: Please proceed.

Mr. Cooney: First, I should give you some idea of what the Ontario English Catholic Teachers' Association is. We are an organization of about 25,000 Catholic teachers. We have existed for about 45 years. We represent teachers in Catholic elementary and secondary schools in about 52 boards across the province, and of course, we are one of the affiliated bodies of the Ontario Teachers' Federation.

We are happy to be here to make some representation with regard to Bill 109. We have four items that we wish to highlight.

Mr. Chairman: Do you have a written brief?

Mr. Cooney: Yes, we do, and we have submitted it to the clerk.

I want to highlight four items that are included in the brief we are presenting to you. The first is the financing of education; second, some

remarks on the constitutional effects of Bill 109; third, some remarks with regard to the transfer of staff; and last, with regard to the retirement gratuity.

In my opening remarks, I would like to emphasize the fact that OECTA supports Bill 109. We support the establishment of a French-language school board that provides francophone ratepayers an opportunity to fully govern their own educational affairs. We trust that this will be done and that this is being done in Bill 109 without abridging the constitutional and acquired denominational and linguistic rights that exist in this province.

I do not intend to dwell at length on the issue of the financing of education, which has been dealt with in many reports over the years. I refer of course to the Commission on Declining School Enrolment report, the Mayo commission report and most recently the Macdonald commission report, but I do want to say that I agree with those who contend that the financial arrangements set out in Bill 109 are not satisfactory.

We believe the French-language school board requires a financial base of support which ensures equality of educational opportunity, as indeed do the English-language school boards in the province. We would see that occurring if there were some pooling and sharing of commercial and industrial assessment, and of grants in lieu of taxes on a per pupil basis.

We support the proposals that are in Bill 109 for the allocation of startup grants and certain other extraordinary funds to assist in the establishment of that board. However, we also believe that compensatory grants must be made to the English-language school boards for their loss in pupils and assessment in a manner to be decided by the legislative process. We suggest that you give consideration to a manner similar to the per pupil grants which were provided to boards of education for the purpose of offsetting the costs associated with the implementation of Bill 30.

Second, with regard to the constitutional aspects of Bill 109, we would seek assurances from the government that the means chosen to attain these ends for francophone ratepayers do not do violence to the constitutional and acquired rights of Roman Catholic separate school supporters, which have recently been reaffirmed in the Supreme Court of Canada with regard to Bill 30.

The proposed legislation is enacted to advance section 23 charter rights, minority-language education rights. There is no such consideration in respect of English-language separate school students in Ontario. However, as time goes by, people may lose sight of that fact. As a result, we recommend that a preamble be inserted into the proposed legislation similar to the preamble in Bill 30. The preamble would stress that this proposed legislation has been enacted in order to advance the unique—I would like to underline the "unique"—charter minority-language education rights of the French-language community. We believe Bill 109 must not diminish the degree of control that Catholics may exercise over their denominational schools.

The sectors of the new board are given exclusive powers that they cannot delegate, and they are given other powers that they can delegate if certain requirements are met.

I would like to draw your attention to two items that could give rise to some conflict. Each sector is given exclusive responsibility over the "Appointing, signing and removing of teachers and other employees in respect of matters within the sector's jurisdiction." That is paragraph 4(1)11.

As well, each sector is given responsibility over the following matter that may be delegated, "Determining the terms on which teachers and other employees are to be employed and fixing their salaries." There could be a possibility of conflict in these two sections. The major constitutional concern, of course, would be the denominational requirements of the separate school system in respect to teachers.

In order to protect denominational rights, we suggest a similar provision to section 18 under the Human Rights Code, and that it be included in the bill. You will know that subsection 18(1) says, "This act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the British North America Act, 1867 and the Education Act."

With respect now to the transfer of staff, we understand that all employees who are currently in the exclusive service of the French-language instructional units will be seconded for an initial period to August 31, 1989, but then their service will be designated to the new French-language board.

We also understand that other central staff who may be displaced as a result of the establishment of the French-language school board are to be identified by each board and their transfer effected by means of agreements among all the boards in consideration of the needs for personnel of the French-language board.

With respect to this, and especially with respect to clause 66(2)(c), we would want to state that it seems appropriate to provide a right of first refusal to those central service employees who may be displaced as a consequence of the establishment of the new board. It also seems fitting to make such provision for designated exclusively French-sector staff in those boards that have a single unified collective agreement and seniority list.

However, it seems inappropriate to us to extend this provision to designated exclusively French-sector teaching staff in those instances where distinct collective agreements and seniority lists now exist for French and English teaching staff of a board. We believe that to do this is to confer added benefits on the members of the transferring teachers at the expense of those who are remaining.

Finally, with respect to the retirement gratuity, OECTA seeks clarification of section 73 that speaks about the financial responsibilities for gratuities. We contend that the English-language board should not be required to shoulder the entire responsibility for past service in this regard, especially when a portion of the supporting tax base and assets are being transferred away.

In closing, I want to express thanks to you, Mr. Chairman, and to members of the committee, for giving us the opportunity to respond to this historic piece of legislation. We support the intent of the bill. It is intended to respond to the unique rights of the francophones to government of their schools. We would wish that you would bear in mind the four items that we raised for your attention. Thank you, Mr. Chairman.

1600

Mr. Campbell: Just for clarification, I have asked this question before of the boards and I am just wanting to make sure that I understand this concern under section 73 of the bill. If there is a portion of the assessment,

a portion of the staff, a portion of the assets and a portion of the debts in the relation to the taxpayers' assessment, why do you not see that would naturally follow, or does it naturally follow, that there would be a proportional changeover of retirement gratuity and other things that you have dealt with financially?

Mr. Cooney: Perhaps you are clarifying that section of the bill in a way that I do not read it. I read that section of the bill as saying that there would be a persisting obligation on behalf of the anglophone school board for a portion of the retirement gratuity for those employees who are transferred to the new board. Our contention is that, if part of the assets are transferred, it is unreasonable to expect that the remaining school board, which will be less that amount of assessment, should have an obligation to fund the retirement gratuity for those employees who have gone to the new board.

Mr. Campbell: I would read that—except where you are dealing with central staff or the transferred staff, and there are some central staff members that would probably be in a situation, as under Bill 30, where they were neither fish nor fowl—do not mind the analogy. But there were some rights and some early retirements, or some retirement provisions did kick in under that, just to sort of even off the playing field. Is that not what, in your mind, is referred to in the subsections 1, 2 and 3 under section 73?

Mr. Cooney: In a sense, what is occurring with regard to Bill 109 is that we have the severing of a corporation and you have a portion of the assets, the schools, the employees and the tax base leaving the corporation that presently exists. We agree that is appropriate in the circumstances and that Bill 109, basically, should be enacted. But we would request that the committee give consideration to the point that it is unfair to expect the remaining board, with less assessment, to have a responsibility for a portion of the retirement gratuity. If part of the assets is gone, then the obligation should be gone.

Mr. Campbell: No. I appreciate what you are saying. Just picking out numbers—I am not saying this is what it will be—let's say it is a 35-65 split. Thirty-five per cent, ideally, would be with the new board and the assessment and everything else, and that retirement gratuity section remaining with the anglophone board would be just that 65 per cent, plus or minus some central staff that are in the middle and who can deal with that small portion. But, by and large, it would be a split based on whatever the assessment numbers come out at.

Mr. Cooney: At this time we are not sure whether the transfer of students will correspond exactly with the transfer of assessment base.

Mr. Campbell: OK.

Mr. Cooney: I am not sure whether that is what you were referring to.

Mr. Campbell: That was part of it.

Mr. Cooney: The Ontario English Catholic Teachers' Association would not be opposed to some assistance from the government with regard to the funding of the retirement gratuities for all boards. This might take care of the problem that exists here.

Mr. Campbell: I appreciate the comments.

Mr. Jackson: My supplementary is a request that you be a little more specific on how you would recommend that we frame the bill in order to resolve the retirement gratuity question. Are you talking about transferring part of the liability, or a cash payout to be put into a fund so that we are responsibly funding this liability? We do not do it in most boards in Ontario, as you well know.

Mr. Cooney: That is true. There have been some innovations with regard to the funding of that by some boards recently, and we trust that those will be successfully implemented.

I am not as expert in this field as some of your legislative staff and counsel and drafters. I would bow to the expertise the committee has at its disposal. I would merely contend that it appears to be unfair that there be a continuing obligation when part of the assets have disappeared.

Mrs. O'Neill: Mr. Cooney, perhaps Mr. Knott would want to answer this question, if I remember his skills in collective bargaining. I would like to have you, as briefly as possible, give me an example of the effect of section 66(2)(c), where you suggest that the francophone teacher, in the right of refusal—I cannot picture what you are talking about and I would just like to have an example, if you could just give me two teachers very quickly.

Mr. Cooney: At the present time, you do have in the Carleton board collective agreements that are negotiated by different unions with different criteria for seniority and different seniority lists.

Mrs. O'Neill: Right, but here you are talking about one agreement.

Mr. Cooney: If you had one agreement, one unified agreement with one unified definition of seniority and one seniority list—

Mrs. O'Neill: Does the Ottawa separate board not—excuse me—also have two different agreements?

Mr. Cooney: Yes, they do.

Mrs. O'Neill: We are talking here in hypotheses then.

Mr. Cooney: I am saying that I would have no problem with the right of first refusal if there presently was a unified agreement and if there were presently unified seniority lists. We know that does not exist.

Mrs. O'Neill: OK.

Mr. Cooney: What in effect would happen would be that you would have a staff member who goes to the French-language board who registers an objection and who sees a job posted after six months that he is interested in. He then returns to that anglophone board and is granted right of first refusal, based on seniority, to that job. He originally had a different ranking on seniority under another collective agreement, so what is occurring is that you have them coming and, in effect, they would be bumping a member of OECTA who is on a seniority list which has been negotiated with that board.

I note that in another section of the bill there was a reference that these sections would not be effective if they offended against existing collective agreements. Perhaps that takes care of my concern. I merely point it out as an area on which we have some concern.

Mrs. O'Neill: OK, because we have done a lot of work in this particular area and I think you are the first ones who have brought that particular clause to us, but I will check to see whether the one will override the other. Thank you.

Mr. Beer: Just a couple of questions that relate to page 3 of your brief and the question of constitutionality. You make the point in the middle of your second paragraph, "The danger is that as integrated boards become more commonplace, it may be suggested that they be incorporated in the English-language system as well."

The first obvious question is, I take it you see this legislation as being precedent setting for other areas with respect to francophones, is that correct?

Mr. Cooney: It is my understanding that a study is under way at the moment with regard to the Sudbury area and Windsor-Essex. I fail to see why such a study would be in process if some consideration was not given to French-language governance in a somewhat similar way to the Ottawa-Carleton area in those communities.

1610

Mr. Beer: I understand the statement. My understanding, though, in terms of why the government proceeded in the way that it did with the French-language board proposal, is that you have the two sections—section 93 from the British North America Act and section 23 from the charter.

I would have thought that would in effect preclude doing this in the English-language system because there is not, in addition to confessionality, the issue of language. So I was also just interested in how that could then be incorporated in any constitutional sense with respect to English-language separate schools.

Mr. Cooney: I would agree totally with your assessment, but indeed there would be no constitutional basis that could be made for transfer of this to the English Catholic sectors. But time does change things and we want to ensure that this bill is on safe constitutional grounds.

We take some comfort from the statements that were made by the minister. As we came in today, we heard some references to information that the committee is seeking with regard to constitutionality and I heard Mr. Scott's name mentioned.

I trust that those statements will be forthcoming in order to reassure us still further that this bill is constitutionally placed, that it does respond to the unique situation that it is meant to address, and that you will give consideration to the items of inserting the preamble and inserting clause 18(1)(b) and perhaps inserting section 29 of the Charter in this bill to just make doubly sure that this bill will not do injury to the Catholic school system.

Mr. Chairman: I would remind members that we are expecting a vote today.

Mr. McGuinty: I am not sure if I have a question, but an observation that I will ask you to comment on, Mr. Cooney. There seems to be a lack of uniformity in the Catholic community regarding the implications or the

constitutional aspects of the bill. This is perhaps not surprising, but I find it disconcerting.

Yesterday we had a statement from the Ontario Separate School Trustees' Association and they were very adamant on this point so far as the precedent that they see to be hereby established. It would be a very, very dangerous one. But your view is that any such precedent could be offset simply by—well, not simply—by a preamble.

Do you have a comment, Mr. Cooney, on why there is such a divergence of views between the Catholic trustees who likewise speak for a considerable sector of our community, and the view that you put forth in this statement?

Mr. Cooney: There is a rich tradition of healthy disagreement between the Ontario English Catholic Teachers' Association and the Ontario Separate School Trustees' Association. That being said, we do share with the Ontario Separate School Trustees' Association a view that says that the constitutional basis of the separate school system must not be undermined by this bill. It is our perception of this bill that with some changes, that the balance that Mr. Beer spoke of can be achieved. Those amendments are not merely the preamble. We would also be very interested in seeing a statement by the Attorney General (Mr. Scott) on this matter.

We presume that such a statement will be forthcoming and I alluded to some changes that could be implemented, that could be effected in the section of the bill that has to do with the exclusive rights. It is our opinion that, for example, number 20 on page 10 of the copy of the bill that I have could usefully be moved into an earlier section that could not be given over to the full board.

Mr. McGuinty: Thank you.

Mr. Chairman: Thank you all very much. Your association's position has been very well put.

Perhaps I could ask Father Carl Matthews, S.J.—I assume it is, ladies and gentlemen; in our programs it says "J.S."—to come forward.

Father, again, I would be grateful if before you begin you would give your name and affiliation clearly for the benefit of Hansard and the translators. I understand that you do not have a written brief.

FATHER CARL MATTHEWS, S.J.

Father Matthews: Thank you, Mr. Chairman. My name is Father Carl Matthews. I shall be speaking without a text. The syntax may take a beating, but I have something to say that is important to me and to those who speak to me, and for me, it can be said best from the heart.

By way of introduction, a few of you here may recall that back on the evening of July 11, 1985, when the then Minister of Education was beginning his wrapup address to the full House on the occasion of the second reading of Bill 30, he said: "Separate schools and the politics and history of Ontario, of course, are a subject about which much has been said. I see in the gallery tonight Father Carl Matthews, who, if he were on the floor of this assembly, I am sure could perhaps give us an historical overview that would be most interesting." I will not do that today. We do not have time for that in this busy schedule.

I speak today not on behalf of Our Lady of Lourdes parish in Toronto or the Jesuit order or the Metropolitan Separate School Board or the Ontario Separate School Trustees' Association. Rather, I come today simply as a student and practitioner of matters with respect to rights of separate school supporters in this great province.

I shall begin with two brief quotations. On the occasion of Bill 109 receiving second reading in the House on May 3, 1988, the Minister of Education (Mr. Ward) said, page 3026 of Hansard, "To all intents and purposes, members will realize that we are creating not only a new school board but a new structure within the Ontario school system."

A quotation now from Dr. Joseph Fyfe in his minority report to the Macdonald commission two and a half years ago: "The right of Roman Catholic parents to establish Roman Catholic dissentient schools was reaffirmed in the Scott Act of 1863. It firmly established the right to establish such schools and to have them governed by Roman Catholic trustees, a right that cannot be shared," and he underlined, himself, those last few words.

He continues: "To propose that this right will be surrendered is to ignore the century-long struggle by Roman Catholic separate school people to have and to control their own complete school system. There have been numerous court decisions affirming the right of Roman Catholic separate school supporters to establish, maintain and govern their own schools."

I respectfully submit that the only defensible position for the Legislature of Ontario to take on this matter is to provide for a wholly autonomous Roman Catholic francophone school board in Ottawa-Carleton.

1620

I have long been a supporter of francophone rights in this province. For three years I struggled, as a trustee on the Metropolitan Separate School Board, to have our board open its first French Catholic high school. There are six motions standing in my name to that effect. We opened that school three years ago, Monseigneur de Charbonnel. It was a great struggle but now it is there, because I believe that francophones have rights to education in their own language, both at the secondary and at the elementary level in all parts of this province.

I recall sitting here in the gallery on June 12, 1986, as Chairman Richard Johnston brought the long hearings of the social development committee to a close on the matter of Bill 30. On that day, the education critic, then of the Progressive Conservative party, brought forward an amendment. I am just going to read the first clause of it, because that is the operative clause. He proposed by way of an amendment "that one or more public boards and one or more Roman Catholic school boards may jointly propose to the minister that the boards be merged to form a consolidated school board." The other clauses were with respect to the method.

That amendment did not carry this committee. Members of the government and members of the New Democratic Party opposed it on constitutional grounds. When the bill went before the full house on Monday, June 23, 1986, once again the then official opposition party proposed that amendment at the time of third reading. The then minister spoke against it on constitutional grounds. The then education critic of the New Democratic Party said this in his remarks: "The notion that there are separate school boards out there that will consent to be dissolved,"—and it is the next phrase that is really important

here—"or might even be within their rights to let themselves be dissolved, in the eyes of the larger Catholic community, to which those rights are accorded under the constitution, begs a lot of questions in my mind. It is a matter that does more to sow mischief than to resolve anything, and our party stands opposed to it."

What we have here in Bill 109 is a consolidated school board. Catholics in this province, as separate school ratepayers, have rights, constitutional rights which have been upheld time and again by the highest court in this land. They are based on the Scott act, a bill that was brought in, in 1863, by the great-grandfather of our present Attorney General (Mr. Scott). Section 7 of that Scott act says, "The trustees of separate schools forming a body corporate under this act shall have the power to impose, levy and collect school rates or subscriptions upon and from persons sending children to or subscribing towards the support of such schools, and shall have all the powers in respect of separate schools that the trustees of common schools have and possess under the provisions of the act relating to the common schools." Its reference is to the Common Schools Act of 1859.

I was pleased yesterday as I sat in the gallery to see, I believe it was on page 10 of the Ontario Separate School Trustees' Association brief, a listing of the rights of common school trustees which are also given to separate school trustees to provide autonomy of governance of their school boards.

Separate school supporters have a constitutional right, not to a section of a board but to an autonomous board. I would beg you, Mr. Chairman, to bring the message to the government of this province that it take Bill 109 back for consideration, that it change the sections to boards; that it remove the upper tier and, in so doing, provide for the francophones in this province either Catholic francophone boards or public francophone boards.

If it is within the power of the Legislature of Ontario here in Metropolitan Toronto to create a francophone public school board, then why can it not be done in Ottawa-Carleton? Catholic schools in Ontario cannot long survive governance which is not wholly autonomous by a Catholic school board.

Yesterday OSSTA circulated to you this book entitled Catholic Education in Separate School Boards in Ontario. It is not a document of OSSTA; it is a document of an omnibus body called Completion Office Separate Schools, commonly known as COSS. It is not written in the context of Ottawa-Carleton or Bill 109; in fact, there is only one passing reference to Ottawa-Carleton on one page of this book. But it refers to the powers that separate school trustees have and powers that they must continue to have to operate Catholic schools into the future. I would really recommend that document to you.

The Court of Appeal of Ontario in its judgement of June 1984, which has often been referred to, made it very clear that section 23 rights of the charter do not replace section 93 rights of the Constitution Act of 1867 but that, rather, they are additional rights piled on the earlier rights. Those quotations, which I will not take the time to read now, are also to be found, I notice, in the OSSTA submission on pages 7 and 11.

In early February, more than one year ago, I was privileged to sit in the gallery at the Supreme Court of Canada to hear distinguished lawyers speak on the matter of the constitutionality of a bill. There were, indeed, truly distinguished lawyers who spoke to the court to the effect that separate school boards did not enjoy a privilege in law that was being attributed to

them. There were other lawyers who took the opposite side. You all know the result: The Supreme Court of Canada ruled seven to nothing in favour of the constitutionality of Bill 30. But more importantly still, it voted four to three, a majority vote, that the Legislature of Ontario had a constitutional obligation to complete the separate school system.

I am confident the courts will uphold the constitutionality of Catholic school boards and rule that sections of school boards are unconstitutional. I would be very surprised if Blenus Wright, assistant Deputy Attorney General, civil law, who argued so eloquently for some three hours before the Supreme Court of Canada in favour of rights of separate school boards and how they cannot be withdrawn, were to speak in favour of the constitutionality of Bill 109.

1630

I have heard it said: "What Bill 109 is about, Father Matthews, is just Ottawa-Carleton. Where do you get the idea that it has anything to do with other boards in this province?" Well, I read Hansard and I have seen many references to the fact that it has been designed as a precedent for other parts of Ontario. How can it be a precedent even for just francophone school boards? Francophone Catholics, as Catholics, have only the section 93 rights that anglophone Catholics have. They have no other constitutional rights, as Catholics, with respect to education. Therefore, how can it possibly be held to the francophone community?

I realize that the Minister of Education (Mr. Ward) very recently, within the past couple of weeks, gave assurances to the officers of the Ontario Catholic Supervisory Officers' Association at their annual convention that there was no danger this would happen in other parts of Ontario. That is nice to hear, but I do not know how that can be upheld, especially in the light of section 15 of the Charter of Rights and Freedoms, the equality provision. How can you say to the francophones in Cornwall or Kapuskasing, who are asking for similar arrangements, "No, you cannot have it"?

That has to be thought of before this bill passes the House, the nature of the precedent that is being established and of the effect it will have on Catholic education in this province. Surely a government that brought in completion of the separate school system after more than 100 years of neglect on that matter would never want to be part of anything that would result in a lessening of the powers and the rights of separate school ratepayers in this province to govern their own schools.

Alternatively, if the government feels that in the next couple of weeks it could not revise the bill to change the sections into autonomous boards, then I would ask that the government do as it did with Bill 30: refer the bill to the Ontario Court of Appeal and ask one simple question: "Are Roman Catholic separate school supporters in Ontario entitled to school boards or simply to sections of school boards?" That is the only matter that needs to be adjudicated now. It is most important that it be done before this bill is proceeded with to third reading and royal assent.

I am going to end with a quotation from the Hope report of 1950. As you know, the whole book is very thick. I did not carry it down here. I brought part of the report, and that is the minority report. This quotation is from the minority report, from the four Roman Catholic members of the Hope commission. They said on page 892 of the full report: "That Roman Catholics in Ontario will defend with the greatest ardour any attack on their rights in

education is an obvious lesson from history. As a minority, they count upon the tolerance, fairness and reason of the Protestant majority of this province, to ensure that the Confederation agreement on the question of schools is not reduced to a nonentity."

Thank you, Mr. Chairman and members of the committee.

Mr. Chairman: Thank you, Father. I must say I did not detect any problems with grammar or syntax. I have Richard Johnston and Charles Beer.

Mr. R. F. Johnston: None of us who have seen Father in action over the years were expecting any, no matter what his disclaimers were at the beginning. It is always dangerous to find somebody who has a great knowledge of history and also reads Hansard. It is very troubling to those of us who make those inconsequential speeches in the House from time to time. I am always impressed by the analysis, the sense of mixing of the detail and the sweep of the issues that are involved.

I guess I probably know what the answers in general are going to be to the questions I am going to ask, but I will pose them anyway. Maybe I will start at the end of what you are suggesting and work back.

You suggest that the only question that needs to be asked of the Ontario Court of Appeal would be whether or not Catholics have a right to a section or to a full board. I am wondering if it does not more come down to a matter of also needing to define what is a section and what is a board.

We are back to your own reading of the Scott Act. If you read again the matters that are the rights of a board from the Scott Act, I just want to ask you how you feel that those, in particular, are jeopardized or derogated from by the items under section 4, those areas which are under the total jurisdiction of each section. They seem to me to encompass all of the things that were talked about in those days.

Father Matthews: I think we would have to concede that both the provisions in the Scott Act in section 7 and in the Common Schools Act of some years earlier are with respect to powers of autonomous school boards. There cannot be any question that the framers of the legislation at that time were referring to a section of another body.

It is not, therefore, appropriate to go into particular clauses of Bill 109 with respect to exclusive jurisdiction or shared jurisdiction. It is simply a matter of the total autonomy of operations that was guaranteed to separate school supporters in what is known as a school board. The meaning of those words is understood universally by everybody in this province to realize that a section is something lesser than the whole, and in this case that in itself makes this unconstitutional.

Mr. R. F. Johnston: Because you take that position, it answers my subsequent questions. I guess the parallel I would make would be the possibility of there being local and regional Catholic boards at some point, much like we have for the public boards, say, in Metropolitan Toronto. There would be a possibility to have a two-tiered system.

Father Matthews: Two-tiered within the public system, surely, as long as the two tiers do not include the representatives of the separate school supporters, because that removes some of the autonomy that they have.

Mr. R. F. Johnston: Your view would be, unlike the Ontario English Catholic Teachers' Association presentation, that there is no preamble or statement or further amendment around sections of our own Human Rights Code or other matters which could be added to the existing bill to make it acceptable to you. It could be done only if these are each distinct and fully autonomous school boards.

Father Matthews: As I indicated at the beginning, I am here as an individual. I sat as an interested observer to hear both of those presentations, and the position of the Ontario Separate School Trustees' Association mirrors my own in that regard, yes.

Mr. R. F. Johnston: Thank you.

Mr. Beer: It is always a pleasure to have you before us, Father Matthews. Certainly your knowledge and understanding of the long history of the development of Catholic education in this province is well known, and I think your comments to us today are ones that we must examine very carefully.

I have a question, but I would like to make just one comment. A number of times the Macdonald report has been referred to. Certainly in my own mind I do not link that or its conclusions or arguments in terms of the majority to the issue that we have been dealing with here. While I recognize concerns that might flow from that, I think that is not something that I see as any kind of hidden agenda in this bill.

1640

I was interested in sort of the historical development of francophone governance in the province. If we go back to 1966 and 1967 there was the Déslauriers report which was done on the franco-Ontarian private schools in the fall of 1966. In that report it was noted that unless something happened by way of an infusion of public funds, those schools were going to disappear.

Of course at that time there was no provision for funding of separate schools at the secondary level and ultimately the francophone population faced a very difficult choice which was, in effect, that you can have French-language public secondary schools but not French-language publicly funded separate schools. So for a considerable period of time then, we had the development of the secondary system in the French language in the public sector.

I guess the point that I am wondering about here is that in terms of the francophone governance and its development, we have done at each step of the way things that were unique or different, perhaps not in strict terms just as they might have been. But in the conditions of the time, at least from the francophone point of view, they were steps ahead in the protection of language rights. In this case we have tried to develop structures that will in some way recognize both confessional and linguistic rights within the francophone community, or serving the francophone community.

From what I have read and heard, it would strike me that there is a balance there which protects those two different, but I suppose intermingled set of rights. That recognition would not follow in terms of what might happen to English-Catholic schools or other Roman Catholic separate school boards that were predominantly English. It would seem to me that the issue would be not so much the specific structure of the board per se, but what was protected confessionally and what was protected linguistically.

In that context, I guess the question is whether those two, which I would think a court would have to look at, are not then protected in the kind of structure that has been proposed. What I think was sort of curious at our hearings in Ottawa was that the concerns expressed about this came more from some of the francophone public school supporters who felt that they might be swallowed up by the sort of separate school sector.

I would be interested in your comments on that interplay of the confessionality and the protection of language rights and whether developing a somewhat unique structure in terms of the francophone community does not still meet both those needs in a fair way.

Father Matthews: I realize the government is struggling to do what it feels is right. As you know from my submission, I feel that it fails with respect to constitutional rights of the separate school supporters. It does indeed honour section 23 rights of the charter with respect to francophone governance, but even the Court of Appeal of Ontario indicated that one was to be added to the other, and not a replacement for the other. Also, as I indicated in my earlier remarks, I fail to see, if this is constitutional, how it is going to be possible to hold it either at Ottawa-Carleton with respect to the francophone community, or more widely still, hold it with the francophone community and not have it apply to the anglophone community. The Carleton Board of Education is asking that question from the other side of the table when I ask it; the Ontario Secondary School Teachers' Federation asks that same question from the other side of the table when I ask it; and you know there are members of the Legislature, in some instances, who have done the same.

That is why it is absolutely essential that it be done right from the beginning. There is so much at stake in this province, in every municipality of this province, as to whatever is done here and the ramifications it will have into the future.

Mr. Beer: Thank you.

Mr. Jackson: Father Matthews, it is good to see you again and to listen to your reserved passion on these matters, and your eloquence. I appreciate your raising the point about the contradiction between the government's approach to Bill 30 and, in this instance, Bill 109 with respect to enjoining any question of the constitutionality of what the bill purports to do. I have raised that on several occasions and I will raise it with the Attorney General (Mr. Scott), but I think it is interesting to note that in Bill 30, when I raised the question, the then Minister of Education, who was present, was quite comfortable in responding that it would be the government's intention.

However, we have not received that same approach in this bill, and I am hopeful that had the minister been able to provide that assurance we could have made further progress with this bill, because I consider it to be one of the main elements. At least our party has expressed concern about proceeding with the bill when there is this constitutional cloud hanging over it.

I appreciate very much your comments and I have no questions for you, but I wanted to at least let you hear my appreciation for the matter you raised today.

Father Matthews: Thank you, Mr. Jackson. I raise my comments, as you know, entirely in a nonpartisan context. I am concerned only with the future

of Catholic education, francophone and anglophone, in this province, and it makes no difference to me which party happens to be in government, which party has disposition of bills, it is a matter of the intrinsic content of the bill and its ramifications in the future.

Mr. Jackson: I merely was pointing out that in your thirst for reading Hansard, you will know that the very first statement made by our party when the bill was tabled was that we feel it would be irresponsible for the government to proceed. I believe yesterday's deputant referred to the resultant chaos that could occur if the Attorney General—and I specifically named the Attorney General—and the Minister of Education (Mr. Ward) did not clarify that constitutional point before we proceed with this bill. That request is now several months old, and yet we are still at this point. I know you, sir, would prefer that you did not have to make your presentation because the matter had been clarified.

Father Matthews: Yes, you did indeed raise it in the second reading debates.

Mr. Jackson: Thank you.

Mr. Villeneuve: Just a brief question. I know you did not get into the real meat of the bill because you want it changed rather drastically, but part XI covers the resolution of disputes. Could you comment on what is in this bill, with the advent of the possibility of its being constitutional?

Father Matthews: Well, Mr. Villeneuve, I maintain that the bill is unconstitutional in its essence, which was the position of the Ontario Separate School Trustees' Association yesterday, quite independent of my presentation today, so that any particular clauses of this bill really need not be addressed until such time as the constitutionality of the section concept is either upheld or not upheld on constitutional grounds.

1650

Mr. Villeneuve: Very interesting. Thank you.

Father Matthews: We are grateful to you, Mr. Adams and members of the committee.

M. le Président: La prochaine délégation est le Conseil des écoles séparées catholiques romaines du district de Sudbury. Je ne sais pas si votre présentation est en français ou en anglais.

M. Montpellier: Dans les deux langues.

M. le Président: Très bien.

Mr. Chairman: Gentlemen, if you could give your names and your affiliations clearly into the microphones before you begin for the benefit of Hansard and the translator, please.

SUDBURY DISTRICT ROMAN CATHOLIC SEPARATE SCHOOL BOARD

M. Tremblay: Onésime Tremblay, directeur de l'éducation et secrétaire du Conseil.

M. Montpellier: Roland Montpellier, président du Conseil.

Mr. Hammond: Robert Hammond, superintendent of English schools and assistant secretary to the board.

Mr. Montpellier: You have before you a fairly lengthy document, but I would like to take the time and read through it fairly quickly. I will read the first portion of the document in English and then proceed in French.

Mr. Campbell: In all fairness to the group that has come down from Sudbury, I think they should be aware that there is another delegation from Sudbury, but as well, that in approximately an hour we are going to be called out of here. I would just keep that in mind when we are going through so that there is time for questions: respectfully, Mr. Chairman, through you.

Mr. Chairman: Mr. Montpellier, if you get to the point where you would like something to be written into the record, you can just say so, a quotation or something of that sort. Can I assume the translators have both versions?

Clerk of the Committee: Yes.

Mr. Chairman: OK, which means that you can read at a reasonable pace.

Mr. Montpellier: Perhaps, then, I will highlight as I go along, as opposed to me reading it word for word.

Mr. Chairman: We are not opposed to you doing so. As you were.

Mr. Montpellier: On page 1, we have described briefly the number of schools the Sudbury District Roman Catholic Separate School Board operates. Basically, there are 9,000 English-speaking students and 10,000 French-speaking students. We would like to highlight that those 10,000 French-speaking students represent more than 10 per cent of the entire French-speaking student population in the province.

The trustees of our board feel they have a clear mandate to protect the interests and rights of their electors, as recognized by sections 93 and 23 of the Canadian Charter of Rights and Freedoms. We feel we would be remiss in our duties and responsibilities if we did not make our views known through the legislation.

One point we would like to make, of course, is that even though this legislation is being considered as applying only to the Ottawa-Carleton district, everyone, I think, will admit that it has often been referred to as a prototype board. It will probably have some impact across the entire province. In fact, we like to refer to it as a third system.

Page 2: We will address the issues according to the subheadings you see at the top of page 2.

Number 1: the constitutional dimension. Our board is of the opinion that the proposed legislation clearly violates the right of French-speaking Catholics to be supporters of the Roman Catholic separate school board. If the proposed legislation is enacted, it is the feeling of our board that any Roman Catholic in Ontario could in fact request that it be submitted to the courts. We highlight the experience of the government of Quebec whose legislation to establish school boards on a linguistic basis was in fact contested in the courts and finally declared void by a decision rendered by Judge Deschêne.

Page 3: It would seem preferable to refer any proposed legislation whose constitutionality is being questioned, first, to the Ontario Court of Appeal to determine whether it is constitutional. The board further recommends that the Legislature of Ontario request the government to submit this legislation or any revised legislation through that same court in order to determine whether it is constitutional. Our board feels it should not be left up to any one board or any one group of individuals or any particular individual to challenge this bill in the courts. The onus should be on the government which brings about the legislation.

The bottom of page 3, the discriminatory consequences: It is felt by Sudbury Roman Catholic Separate School Board, that the effect of the legislation would be the creation of English-language boards of education and English-language separate school boards in the Ottawa-Carleton region.

We feel that the basic presumption that French-language aspirations would be more effectively addressed by regrouping francophones, whether they be public school supporters or separate school supporters, and bringing those two groups together, with two different and sometimes opposing value systems, does not necessarily make for better relations among francophones.

Subsection 2(3) of the proposed legislation stipulates that the French-language board has the exclusive right over school instruction in the French language. Subsection 2(4) indicates that English-language school boards have the exclusive right to provide school instruction in the English language.

Such a restrictive measure, in our opinion, is a serious infringement on the religious rights of French-speaking Catholics, since it prevents them from being supporters of a Roman Catholic separate school board and, at the same time, availing themselves of their linguistic rights. In other words, it prevents them from being ratepayers within a Catholic school board, as is the case for English-speaking ratepayers. They will have no choice whatsoever but to be part of a mixed French-language school board, or a unified board.

Another vivid example of similar discrimination between Catholics and nonCatholics is the establishment in Toronto of a French-language school council. This, we feel, is discriminatory against French-speaking Catholic school supporters who do not enjoy equal rights within the Metro area. But it certainly is more respectful of the rights enjoyed by public school supporters.

In order to avoid discrimination, the alternative course of action would be to create a Roman Catholic English-language school board, as well as a Roman Catholic French-language school board, an English-language board of education and a French-language board of education.

It is the feeling of our board that the establishment of two Catholic boards, one English and one French, would be constitutionally valid and would not deprive any citizen of his religious rights under section 93, or of his linguistic rights under section 23.

The board supports the position expressed by the Ontario Separate School Trustees' Association, and you have, at the top of page 6, the resolution that was adopted at the annual meeting of the OSSTA. I believe it was last year or the year before.

At the bottom of the page. The board is also aware of a policy statement of the education commission of the Ontario Conference of Catholic Bishops, dated March 22, 1988. That states:

"1. The ideal solution for the Ottawa-Carleton area would be to have both francophone public and francophone Roman Catholic boards collaborating as much as possible in order to encourage greater francophone unity and harmony.

"2. In any such collaboration, all rights for Roman Catholics in the separate school system, whether denominational or linguistic rights, must be preserved intact.

"3. There should be no attempt to impose this solution, appropriate to the needs of the francophones of the 'capital area,' as a model for the rest of Ontario."

We would also like to further highlight the fact that the Honourable Sean Conway on July 10, 1986, announced that there would be a two-year study on French-language regional school boards, and we understand that this study is to be completed at the end of this year. Therefore, we feel it would be more proper to await the completion of the study before proceeding with the establishment of a prototype board, which, as I indicated before, would have a major impact across the province.

1700

I will proceed to point 4, the divisive approach. For the government of Ontario to enact legislation that will apply exclusively to one linguistic group within a prescribed geographical area in such a vital sector as education is not only discriminatory in nature but also very divisive. It is divisive because, in order to appeal to the attractiveness of the notion of grouping all francophones within the same jurisdiction, the proposed legislation forces French-speaking Catholics to accept the eventual erosion of their value system and beliefs, which constitute the core of a purely Catholic system.

The proposed legislation includes an area of common jurisdiction where non-Catholic trustees elected for public school purposes would have decisional authority over matters which would have consequences for Catholic school supporters. With a minimum of seven trustees to be elected to represent public school supporters, it becomes evident that decision-making within the area of common jurisdiction could have an impact on Catholic education, and when such situations develop, everyone then realizes that legislation which was intended to unite francophones ultimately divides them on a denominational basis rather than on a linguistic basis. It would be better to achieve unity by promoting a diversity of school boards that will take into account the basic rights previously mentioned.

Rather than enact legislation which will create even greater division by trying to merge two opposing value systems, the legislators should recognize the basic rights of all concerned by creating Catholic boards on a linguistic basis. Such boards would respect both the religious and linguistic rights that are enshrined in the Canadian Constitution and the Canadian Charter of Rights and Freedoms.

Le but ultime: Quand on considère le projet de loi et que l'on écoute attentivement les commentaires qui ont été faits par les membres de la Législature de l'Ontario lors de sa présentation en deuxième lecture, il devient clairement apparent que, dans l'esprit de plusieurs, il s'agit seulement d'un premier pas vers la création de grands conseils-parapluies sur une base régionale.

Si tous les francophones catholiques et non catholiques peuvent être unis sous un conseil mixte du point de vue confessionnel, quelle logique pourrait empêcher une loi semblable qui s'appliquerait aux anglophones? La résistance à un tel projet serait sans doute plus forte à cause des nombres, mais le résultat éventuel serait le même. Une fois que des conseils mixtes seront établis sur une base linguistique, qu'est-ce qui empêcherait qu'un superconseil réunisse sous son parapluie les différents groupes de contribuables déjà mentionnés? Les promoteurs de l'unité à tout prix pourront alors dire qu'ils ont presque atteint leur but ultime de n'avoir qu'un système scolaire public pour toute la province.

Les législateurs expriment souvent certains points de vue afin de vérifier l'opinion publique. Notre conseil désire indiquer qu'il n'acceptera jamais volontairement une initiative qui porte atteinte aux droits religieux et linguistiques dont ses contribuables jouissent présentement. Par conséquent, le Conseil s'oppose: à la création de conseils scolaires mixtes ou de conseils-parapluies; à la limitation des droits confessionnels à l'enseignement de la religion; au partage de la responsabilité de l'éducation catholique avec des non-catholiques; et à tout empiètement sur les droits garantis par l'article 93 de la constitution canadienne et l'article 23 de la Charte canadienne des droits et libertés.

Les solutions de rechange: Dans les circonstances, le Conseil maintient l'opinion que le gouvernement, aussi bien que les membres de la Législature de l'Ontario, doit considérer sérieusement les possibilités suivantes:

(1) soumettre à la Cour d'appel de l'Ontario le projet de loi 109 portant sur la création d'un conseil scolaire de langue française dans la municipalité régionale d'Ottawa-Carleton afin qu'elle détermine si ce projet de loi est constitutionnel ou non; (2) réviser le projet de loi 109 afin de le rendre constitutionnellement acceptable; (3) compléter l'étude ministérielle se rapportant à l'établissement de conseils régionaux de langue française en considérant la possibilité de créer des conseils scolaires catholiques de langue française; (4) entreprendre une consultation qui permettrait vraiment aux conseils et aux contribuables de soumettre leurs points de vue sur les changements proposés avant qu'ils ne soient légiférés.

In conclusion, our board strongly recommends that the government proceed cautiously, bearing in mind the religious and linguistic rights of all Catholics as presently enjoyed under section 93 of the Constitution and section 23 of the charter.

The board is of the opinion that the ministry should at this time complete the implementation of Bill 30 and Bill 75 and deal fairly with the whole issue of the financing of education before proceeding with further legislation. The government should prepare a paper and give all Ontarians a clear indication of the short-term and long-term objectives such legislation would have.

The board wishes to express its appreciation to the members of the standing committee for the consideration they and other MPPs will give to the views we have expressed.

Mr. Chairman: I would like to suggest to Hansard, if the committee agrees, that this report in its entirety be placed on the record.

Mr. R. F. Johnston: I guess the problem I was having with Father Matthews's interpretation and with yours as well is in terms of this notion that somehow a section of a board need necessarily be a derogation of rights.

I wonder if you could tell me what it is you think is missing from the list of rights listed under part II, subsection 4(1) that means there is a derogation of rights to either the Catholic board or a French Catholic section of a board versus what you have available to you, for instance, as a board in your own right in Sudbury. What is missing?

Mr. Montpellier: It is not so much what is missing, it is the fundamental question, as expressed by Father Matthews before us, that in a unified board—if I can use that expression to refer to the type of board being proposed by Bill 109—the rights of Roman Catholics to have their own autonomous board are not respected. It is not so much what is missing in terms of specifics in section 2 of Bill 109, to which I believe you are referring.

Mr. R. F. Johnston: The rights guaranteed under section 93 and under section 23 of the charter are two of the rights to run and manage your own system. I think a rose is a rose and that is one thing, but a rose by another name is still a rose. In this case, a section has exactly the same powers as do you as a full board. What is the danger to the principle that is involved in the Constitution and in the charter?

My problem with the reference question that Father Matthews is raising is that I think if this were to be referred, you would have to not just refer the question, "Can a section or a sector of a board be seen to be the same as a board?" Rather, it would be, "Can the definition of a section and the powers of a section as listed under this act be considered to be equal to that of a board?"

That is why my question to you is about what is there that is missing in terms of total rights and autonomy under that first subsection, which is the autonomous powers of each of those sections. What is the difference between that and your powers as a board?

Mr. Montpellier: I believe there could be a situation, for example, where trustees who have been elected by Catholic ratepayers, or by public ratepayers for that matter, will be asked to make decisions in matters that are considered to be central in nature or central services that could impact on the other sector of that board. In that sense, a sector does not have complete autonomy to make full decisions for a board.

I agree with you that perhaps it is a question of defining what is a sector or what is a board. Nevertheless, this is something we feel has to be determined by a court before we can go any further with this legislation.

1710

Mr. R. F. Johnston: I take your point. I guess what I am searching for is to find out what has been triggering the reaction besides the theoretical constitutional question, because if I look at subsection 4(1), it indicates, "Administering and closing instructional units," "Planning, establishing... programs," "Religious instruction and visitors to schools," "Admitting pupils," "Appointing, assigning and removing teachers"—all those kinds of controls that are presently there within the Catholic system—"Determining the terms on which teachers and other employees are to be employed."

All those things that are crucial to the maintenance of the mission side of the Catholic system at the moment seem to be included in here, whereas if you look at the joint-sharing things, they are not things which can impinge on

those in any way. They are to do with removing the executive director, appointing the auditor, allocating to each of the sectors facilities that are required, and then they name the exclusive jurisdiction of the full board. Again, they are committee things. They are nothing to do with the actual running, the mission or approach to, say, linguistic education that the French public sector might wish to bring in.

I guess I am looking for more than just a straight theoretical question, because I take the notion of a reference very seriously in that it may be a useful process. I am wondering whether there is something that leaps out at you that is missing from the list and that you see as possibly being a way for a combined board decision to affect the actual running of the Catholic sector of the French system or of the English Catholic system.

Mr. Montpellier: If I may again, my arguments are basically on the constitutional issue—as you call it, the theoretical issue—but perhaps the director of education and superintendent of English schools might have some direct response to your question. I personally do not at this time.

Mr. Campbell: First of all, on behalf of my constituents, I welcome you here in front of this committee. I particularly want to mention the director. Mr. Tremblay is retiring after a long and hard-fought career for a number of rights in Sudbury, and I congratulate him on a very full career with his work for the separate school board.

I think the comments that have been made by the Roman Catholic board in Sudbury start to distil some of the things we have heard said across the province. I think it is fair to say that at some point our decision may start to appear in Sudbury, and along the same lines that are being felt, so I congratulate you in coming ahead of the situation and commenting on this bill. Maybe the effects in Sudbury will be a bit different.

In that context, if I might, keeping in mind the time, I will pass on the specific questions at this point in time and merely point out that these good folks have come down quite a substantial distance to make this representation, and I appreciate the fact that they were able to do so.

Mr. McGuinty: I did not have time to raise this with Father Matthews, but you were basically, I think, in agreement with his position regarding the constitutionality of the proposal. I would appreciate your comment very much.

You are looking at this situation from a different perspective from those of us who have worked in this area for a long, long time in the Ottawa-Carleton area. During the 16 years that I was a trustee in Ottawa, we had the evolution from the point when the French people did not even have their own schools, and now they look to the development of their board as a kind of a logical extension of earlier developments.

I have never had a word brought to my attention from the francophone community in the Ottawa-Carleton area regarding the constitutional aspect. Today we have had the earlier brief stating that the concern you express could be taken care of by a preamble which would somehow safeguard against the precedent, kind of a "whereas" or "notwithstanding" clause.

I am not a lawyer, so all I can bring to bear upon this is the dictates of common sense. Could it not be stated that if a minority has a right and is willing to forgo that right, that should be permitted?

In other words, if the francophone community of the Ottawa-Carleton area, as I have read its views over the years, would be willing to forgo a constitutional right that it has with a "notwithstanding" clause, a preamble to safeguard this being referred to subsequently as a precedent, would that not allay the concerns that you express? I sympathize very strongly with your concerns from that point of view, sir.

Mr. Montpellier: If I may respond, I am certainly not a resident of the Ottawa-Carleton region, but from what I have read of the situation and from what I know of the Roy commission, I was under the impression that several constitutional experts had in fact been consulted, and there are as many opinions as there are constitutional experts on whether this in fact is constitutional. So I am not sure I share your view that all of the francophones in the Ottawa district are in fact in support of this bill. But as you say, you are from that particular district and you certainly are in a better position to indicate that than I am.

Our concern with the bill is that it could become a prototype and we, in Sudbury, do not want to see that type of prototype structure imposed on any other region in the province. That is put about as clearly as I can put it.

Mr. McGuinty: All right. Thank you very much, sir.

Mrs. O'Neill: I think it is time that I make a statement about prototypes. That has come up several times today. The Minister of Education (Mr. Ward) has stated over and over again, certainly at the hearings, if not in the House, that this board is not a prototype. It is not a model. It is for one situation. It has been coming together since 1974 for a certain situation in a certain place in this province. I want to have that stated in the record.

I do find it difficult too when it is said that the words of Mr. Conway indicate that there will be regional boards. I have reread and reread that, and he does not say that. He suggests that there may be other French school boards. He does not say "regional," at least as far as I have been able to see in Hansard.

These are interpretations that have been placed on other politicians' comments. They may turn out to be what comes to pass, but they are not the intentions of the men making the statements, as far as I know, and I certainly have discussed this with Mr. Ward. He stated rather clearly, I thought, in Ottawa last week that each area will be looked at very distinctly. I have a guarantee personally to that, and he has made one publicly.

The study that you are talking about is taking place. Its results are basically data collection, and it will definitely be examined very closely, particularly after these hearings. I feel it will have even more of a profile this year, 1988. I really do feel that we should try.

I can understand the constitutional challenge of this particular bill. But I would hesitate to talk about this as a prototype, and I certainly will not do so personally, because right from the beginning, Mr. Ward has made it very clear and I have heard him on several occasions stating this is not a model, which is another word for prototype.

Mr. Beer: Just very briefly, because I want to be quite clear on this, your opposition to this bill is similar to Father Matthews's in that it is to the fundamental principle of the bill. What you are saying is that constitutionally the only acceptable path is to have a French-language

separate board and a French-language public board, regardless of any attempts to define that which is more properly Catholic or that which is more properly public. Is that, in essence, it?

Mr. Montpellier: Yes, I think you have hit the nail on the head, if I may use that expression. However, the creation of two autonomous French boards, one Catholic, one public, does not preclude co-operation in areas where those two boards feel that there should be co-operation, and that is up to the boards which have been created.

1720

Mr. R. F. Johnston: If I could, something came out of Father Matthews' presentation which I would like us to see if we could do, that is, to ask the Attorney General (Mr. Scott) to also prepare himself for commentary on whether section 15, the equal services matter, does raise the whole question of prototypes, because it may beg that. I am not sure if it does, but it would be useful to the committee to get an opinion on that.

Mr. Chairman: Do I see agreement on that?

Mrs. O'Neill: Yes. I am not sure if the Attorney General has dealt with that particular part of the constitutionality, but we can certainly ask him to comment on it when he makes a presentation on the other items.

Mr. Chairman: I think it certainly is a different angle on the same thing.

Mrs. O'Neill: I am not sure that that has taken place, that kind of examination.

Mr. R. F. Johnston: Finally, I want to say that Miss Martel wanted to be here today but was in fact in the north on caucus business and could not be here, but as you know, she raised a lot of your concerns in the House on second reading.

M. le Président: Je vous remercie, Monsieur Montpellier. Merci beaucoup. Mr. Hammond, thank you very much indeed.

Mr. Montpellier: I believe Mr. Tremblay has a word to add.

Mr. Tremblay: If the constitutionality of the proposed legislation is looked at by the Attorney General, I believe it should be looked at from two points of view. I personally feel, as a French-speaking Catholic, that I have what I call an individual right to be a Catholic school supporter and elector, and this right no one can take away from me. I also have, with other members of the Catholic French community, a collective right, that is, a right to establish and maintain Catholic schools. Even though, within one community there might be a majority of a minority that wants to give away a right which is in the Constitution, I sincerely believe that the individual still has his individual right, and this should be closely looked at and respected.

Mr. Chairman: Thank you. I do not want to appear to be hurrying you, but we are concerned about a vote. If there is a vote, we have to leave. Gentlemen, thank you very much, indeed. We do appreciate it.

La prochaine délégation est le Conseil de l'enseignement en langue française du Conseil de l'éducation de Sudbury, Mme Denise St-Jean.

CONSEIL DE L'ENSEIGNEMENT EN LANGUE FRANCAISE
CONSEIL DE L'EDUCATION DE SUDBURY

Mme St-Jean: Oui, je suis Denise St-Jean, conseillère en éducation au Conseil de l'enseignement en langue française du Conseil de l'éducation de Sudbury.

Monsieur le Président, nous vous avons remis deux documents. L'un est le mémoire que je vais présenter et l'autre est une correspondance que notre Conseil a entretenue avec Mme Yvonne O'Neill. Alors, je vous ai fait part de cela puisqu'il y a des notions là-dedans qui complètent ma présentation, mais je n'y toucherai pas dans cette présentation.

Monsieur le Président, membres du Comité, au nom du Conseil de l'enseignement en langue française du Conseil de l'éducation de Sudbury, je vous remercie de nous permettre de présenter nos réactions au projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

Le gouvernement de l'Ontario offre aux francophones de la région d'Ottawa-Carleton le projet de loi 109 et tente ainsi de donner suite au jugement de juin 1984 de la Cour d'appel de l'Ontario en accordant la pleine gestion scolaire aux francophones. Cette tentative accorde la gestion totale uniquement aux francophones de la région d'Ottawa-Carleton et détermine par le fait même que les francophones du reste de la province seront lésés dans leurs droits constitutionnels à la pleine gestion scolaire.

En effet, le CELF du Conseil de l'éducation de Sudbury gère quatre écoles secondaires et trois écoles élémentaires pour une population étudiante d'environ 3000 élèves. Ce qui est regrettable, c'est que, sans le contrôle financier, le CELF du Conseil de l'éducation de Sudbury soit limité dans son expansion, dans sa programmation et dans sa gestion réelle.

Oui, le financement est au coeur de la gestion. Sans ce contrôle par les francophones, il n'y a pas gestion par les francophones et, par conséquent, la Loi 75 est une illusion.

Les francophones du secteur public de la région de Sudbury réclament la pleine gestion, le contrôle des structures décisionnelles de l'éducation des francophones et un nombre de conseillers suffisant pour administrer leur système. Nous réclamons le contrôle financier qu'accorde le projet de loi 109.

Nous avons cependant certaines inquiétudes au sujet du projet de loi 109 puisque cette loi servira sans doute d'outil à la création éventuelle de conseils de langue française ailleurs dans la province.

Notre première inquiétude réside au niveau du financement. Le paragraphe 48(3) du projet de loi 109 accorde, par le biais du lieutenant-gouverneur, le paiement de subventions spéciales et temporaires. Le terme <spéciales> s'applique, pour l'instant, uniquement à la région d'Ottawa-Carleton. Par contre, le terme <temporaires> établit une distinction injustifiée à l'intention de la minorité francophone en lui refusant la stabilité essentielle à une planification à long terme. Ayant droit à l'égalité, serons-nous toujours traités en marginaux?

Chaque élève francophone au secteur public du Conseil de l'éducation de Sudbury jouit présentement de la même source de revenu que la majorité. Nous puisons à un riche coffret commercial et industriel bien étoffé grâce aux ressources humaines anglophones et francophones. Le processus d'identification francophone et l'adhésion à un conseil de langue française amoindrisent-ils la qualité <publique> d'un contribuable en lui enlevant l'accès financier qui permet à son conseil d'offrir à la minorité un service d'une qualité égale à celle dont se dote la majorité? Ce principe est à la base du vouloir politique qui a créé les projets de loi visant à desservir la francophonie: <The quality of education to be provided to the minority is to be on a basis of equality with the majority.> Voilà le jugement de juin 1984 de la Cour d'appel de l'Ontario.

Deuxièmement, le modèle du conseil de langue française d'Ottawa-Carleton peut servir de tremplin à la formation de conseils de langue française ailleurs dans la province. Cependant, nous demandons au gouvernement de considérer d'autres modèles de conseils de langue française afin de permettre aux représentants élus d'offrir des choix véritables à leur communauté francophone: système public ou système catholique. Nous craignons qu'un système de langue française unifiant ces deux sections puisse diminuer l'efficacité de la section publique et ainsi limiter les choix de la minorité. Le secteur public anglais jouit d'une pleine autonomie et d'un plein financement. Le modèle d'un conseil de langue française que nous désirons serait un conseil avec les mêmes droits et privilèges. Le système public français de Sudbury doit obtenir une gestion financière et une représentation de conseillers scolaires adéquates à son plein épanouissement.

De plus, le recensement municipal effectué en avril et mai 1988 demande aux francophones d'être renseignés et vigilants afin de ne pas être lésés dans leur droit d'adhérer à un CELF. Cependant, la majorité anglophone peut rester passive et être correctement identifiée. Est-ce là l'égalité dictée par le jugement de juin 1984 de la Cour d'appel visant à respecter la Charte canadienne des droits et libertés?

Le gouvernement s'est assuré par des mesures spéciales que les francophones de la région de Toronto auront un nombre de conseillers suffisant pour gérer un système ni plus grand ni plus vaste que le nôtre. Le gouvernement s'assure, dans la partie VIII du projet de loi 109, que les francophones d'Ottawa-Carleton, eux aussi, auront un minimum de sept conseillers pour une section publique semblable à la nôtre. Le gouvernement a-t-il oublié la collectivité française publique de Sudbury qui, elle aussi, réside sur un vaste territoire et réclame des services éducatifs d'une qualité égale à celle de la majorité, tel que proposé pour Toronto et Ottawa-Carleton?

Nous reconnaissons la bonne volonté du gouvernement de l'Ontario, qui a su favoriser les services des francophones par des mesures telles que la Loi de 1986 sur les services en français; le projet de loi 75 visant à donner une certaine gestion aux francophones; le projet de loi 109, Loi portant création d'un Conseil de langue française pour la municipalité régionale d'Ottawa-Carleton; et la priorité du Parti libéral de créer des collèges communautaires de langue française.

Nous demandons au gouvernement d'accorder à tous les francophones de la province le droit à la pleine gestion par le contrôle du financement.

Nous demandons pour novembre 1988 le nombre minimum de huit conseillers scolaires pour gérer efficacement la section française du Conseil d'éducation de Sudbury.

1730

Nous demandons au gouvernement d'établir maintenant des mesures de financement à long terme à l'intérieur du projet de loi 109. Sans la distribution équitable des taxes industrielles et commerciales, nous craignons une disparité entre la qualité de l'éducation de la minorité et celle de la majorité.

Le projet de loi 109 aura sans doute des répercussions sur tous les Franco-Ontariens. Nous demandons au gouvernement d'être sage et de respecter la Charte canadienne des droits et libertés en ce qui a trait aux droits de tous les francophones de la province, y compris les français publics de Sudbury.

Je vous remercie, Monsieur le Président et membres du Comité. Je répondrai avec plaisir à vos questions sur le mémoire du CELF du Conseil de l'éducation de Sudbury.

M. le Président: Voulez-vous que la correspondance avec Mme O'Neill soit inscrite dans le journal du Comité?

Mme St-Jean: S'il vous plaît.

M. Beer: Ma question porte d'abord sur la position du CELF du Conseil sur le principe du projet de loi 109. Je veux vous comprendre clairement. Est-ce que le CELF est de la même opinion que le Conseil, à savoir que le principe de base de ce projet de loi constitue le vrai problème et qu'on ne peut pas vraiment mettre les deux sections, la section francophone publique et la section francophone catholique, sous le parapluie de la structure proposée par le projet de loi 109? Est-ce que vous dites ça comme principe?

Mme St-Jean: Je comprends la question. Autrefois, le Comité consultatif de langue française de la région de Sudbury, et maintenant, le CELF du Conseil de l'éducation de Sudbury, ont toujours eu comme philosophie qu'un conseil homogène unissant tous les francophones de la région serait un principe pour lequel nous travaillerions. Dans les situations actuelles et sans l'autonomie totale pour chacune des sections, il se présente certaines difficultés. Alors oui, nous sommes d'accord sur le principe de base, mais dans les situations actuelles, nous disons que l'étape peut-être transitoire d'un conseil de langue française publique autonome serait ce que nous voudrions à ce moment-ci.

M. Beer: Je comprends que, à l'heure actuelle, on n'est peut-être pas dans la même position dans le cas de Sudbury que dans la région d'Ottawa-Carleton; mais vous ne nous dites pas que pour Ottawa-Carleton il ne faut pas nécessairement créer un tel conseil avec les deux sections.

Mme St-Jean: Monsieur Beer, je pense que quand on forme quelque chose ou on donne à une communauté une forme de gestion, il faut consulter cette communauté-là. J'apporte le point de vue du conseil de langue française de Sudbury pour ce que nous désirerions pour notre région. Je ne vois pas comment je peux aller dire aux gens d'Ottawa-Carleton ce qu'ils devraient avoir. Ce que je dois souligner et qui est absent dans ça, c'est l'accès aux taxes industrielles et commerciales, une base de financement permanente et adéquate.

M. Beer: Bon. Je comprends ça et je n'avais pas l'intention de vous forcer de dire ce que pensent les gens d'Ottawa-Carleton, mais je pense quand même que la question de principe est importante. C'est-à-dire tout simplement que, selon vous, le principe du projet de loi 109 comme réponse aux besoins des gens d'Ottawa-Carleton n'est pas nécessairement néfaste?

Mme St-Jean: Non, et le principe ne serait peut-être pas néfaste éventuellement dans la région de Sudbury si on pouvait mieux desservir la francophonie en unifiant certaines ressources aussi.

M. Beer: D'accord, merci beaucoup.

M. Villeneuve: Merci bien, Madame St-Jean, pour votre présentation. D'après vous, est-ce que le projet de loi 109 va survivre sur le plan constitutionnel?

Mme St-Jean: Opinion personnelle?

M. Villeneuve: Oui.

Mme St-Jean: Si on donne la pleine gestion aux francophones dans les deux secteurs, oui; si on accroche le potentiel de gestion d'un conseil à l'autre, il peut y avoir des difficultés.

M. Villeneuve: Voyez-vous un conflit entre le projet de loi 75 sur la gestion scolaire et le projet de loi 109?

Mme St-Jean: Un conflit? Je vois que le projet de loi 75 n'est pas complet, dans le sens qu'il a donné une gestion partielle aux francophones mais il ne leur a pas donné la gestion totale. Le projet de loi 75, à l'intérieur d'un système public, est une étape de transition vers la gestion totale, qui donne aux francophones leur droit constitutionnel à la gestion. A l'intérieur d'un conseil séparé, il y a toute la partie de religion qui a d'autres droits enchâssés dans la constitution canadienne; dans le secteur public nous n'avons pas ce problème puisqu'on pose le problème de droits linguistiques uniquement et non celui de droits de confessionnalité.

M. Villeneuve: Vos commentaires touchent aussi au projet de loi 125 sur l'énumération, la façon d'énumérer, la façon de se faire reconnaître comme contribuable. Nous avons exprimé certaines réserves là-dessus puisqu'il y a un certain nombre de gens, peut-être pas un très grand nombre, qui ne pourront pas envoyer leurs taxes scolaires au secteur séparé à cause de la façon dont on les énumère; je crois que vous avez touché à ça dans votre présentation ici. Alors, ça laisse à désirer un peu. Il y a beaucoup de choses à faire du côté du projet de loi 125 ainsi que du côté du projet de loi 109 pour répondre aux exigences de notre minorité francophone.

Je vous remercie de votre présentation.

Mme St-Jean: Merci, Monsieur.

M. le Président: J'ai Sterling Campbell, puis Richard Allen.

Mr. Campbell: My apologies for having to step out. All these things come together at six o'clock, I guess.

First, let me commend you for coming down here. I know of your past interest and present interest, of course, in the public board sector of

francophone language education. I know you have been active on a number of committees in that area, as when I was involved in videotaping the school board minutes with my students.

Basically, the thrust of your excellent comments deals with that sector of the constituency of the Sudbury district in that there are a number of francophones who prefer the public education system, for whatever reason. I think you made the point that if it does come to Sudbury, in whatever future form—not necessarily this bill, because it does not deal with Sudbury—you have made the expression very clearly of your desires to that effect, and I appreciate them.

M. Allen: Merci, Madame, de votre mémoire au sujet de ce conseil scolaire et du projet de loi 109. Comme vous, je pense qu'il est important d'avoir des conditions équitables et adéquates à l'établissement d'un tel conseil scolaire. En ce qui concerne le financement d'un tel conseil, je me suis aperçu que vous voulez que le conseil ait des ressources financières adéquates à une éducation équitable pour les jeunes francophones de l'Ontario et de cette région en particulier. Mais est-il nécessaire que la réforme du financement éducatif soit terminée pour commencer un autre projet, ou est-il nécessaire seulement que les ressources financières soient absolument adéquates à cette tâche pour assurer aux francophones une éducation équitable et adéquate?

1740

Mme St-Jean: Je pense que l'éducation publique a fait appel à une certaine collectivité francophone puisqu'il y a une qualité d'éducation dans le secteur public qui est possible avec un meilleur financement, ou qui l'était avant le projet de loi 30 et l'est encore aujourd'hui.

Maintenant, l'expansion possible de ce système — et je choisis mes mots de façon à ne blesser personne — est limitée jusqu'à un certain point puisque le contrôle financier est entre les mains de la majorité, qui ne fait pas partie du processus décisionnel et représentatif de la communauté francophone. Lorsque nous voulons ajouter des services, par exemple, nous pouvons le faire, en principe; mais lorsque nous en venons à les financer à même un budget commun, nous n'avons pas le dernier mot à dire sur ce qui est décidé pour les francophones. Alors, en principe, tout est possible; dans le vécu, il y a des choses avec lesquelles il faut vivre à cause de la gestion incomplète.

M. Allen: A long terme, donc, il est important d'avoir un système basé sur les mêmes ressources; il est donc possible d'avoir la même gérance de vos écoles. Mais à court terme, si le financement à Ottawa-Carleton, par exemple, est équitable, adéquat, aussi généreux que celui des systèmes anglophones, c'est adéquat à court terme.

Mme St-Jean: Il est difficile de dire combien on se fait prendre à court terme et qui devient à long terme.

M. Allen: Vraiment.

Mme St-Jean: Moi, ce que je ne veux pas voir, c'est que les francophones soient mis encore une fois dans une situation où ils seront considérés comme des marginaux parce qu'il y a eu une façon de faire qui est acceptable à court terme qui reste à long terme.

M. Allen: Merci beaucoup.

Mme LeBourdais: Madame St-Jean, du fait que vous êtes ici aujourd'hui, puis-je croire que vous pensez que cette loi n'est pas un précédent mais plus spécifiquement un modèle pour Sudbury, plus tard?

Mme St-Jean: Madame LeBourdais, nous ne l'avons pas appelé un modèle, mais quand il existe quelque chose d'écrit quelque part, il est très possible d'aller le voir, soit pour bâtir différemment ou pour bâtir pareillement. Alors moi, j'ai parlé d'un tremplin, j'ai parlé d'un autre mot, mais je n'ai pas nécessairement dit que ce serait un modèle. Lorsqu'il existe quelque chose, on va vérifier comment ça se passe à un tel endroit pour voir si on le veut différent ou semblable.

Mme LeBourdais: Si vous voyez ça comme un modèle, pensez-vous que c'est un modèle qui ne serait bon ni pour Ottawa-Carleton ni pour Sudbury?

Mme St-Jean: Pour Ottawa-Carleton je ne commenterai pas si c'est bon ou pas bon. Pour la région de Sudbury, présentement ce n'est pas un modèle qui pourrait fonctionner, étant donné certaines choses qui se passent dans la communauté. A long terme, quant au principe de l'unification de tous les francophones, on a toujours cru que c'était une bonne façon de faire. Pour l'instant, je crois que de procéder par étapes, ce serait une meilleure façon.

Mme LeBourdais: Merci.

M. le Président: Madame St-Jean, je vous remercie d'être venue ici de Sudbury. La présentation était très intéressante.

Mme St-Jean: Merci, tout le monde.

M. le Président: Merci.

ORGANIZATION

Mr. Chairman: Ladies and gentlemen, if we could in the time available, there was the matter of the scheduling of Bill 100 that Richard Johnston raised earlier. I have the draft here of the letter which was proposed yesterday. I simply want to know how to proceed to it. This is addressed to Sean Conway, the House leader, with copies to the House leaders and whips of the other parties:

"The committee has directed me to request that we be permitted to meet during the summer recess. The committee would prefer to meet in July for four weeks.

"It has been suggested that the committee consider the following: Bill 50, An Act to provide for Community Mental Health Services; and the following items, if referred to the committee by the Legislative Assembly: (a) recommendations of the standing committee on public accounts relating to the Problem in Mental Health Care;"—and you will remember that David Reville made the point that those recommendations tie in with Bill 50—"(b) Bill 100, An Act to amend the Education Act.

"I would appreciate an early response to our request."

Is there a wish that I modify that?

Mrs. O'Neill: You said that is from Mr. Allen?

Mr. Chairman: No; Richard Johnston earlier today.

Mrs. O'Neill: Will there not be quite drastic conflicts with the select committee on education?

Mr. Chairman: Yes. Again, it seems to me from yesterday's discussion the idea is that the House leaders sort that out.

Mr. Jackson: Why are they specifically requesting July when we know it is a conflict?

Mr. Chairman: By the way, from the schedule that I have, it looks as if there is less conflict in July than there is the next month, except that it has to do with education.

Mrs. O'Neill: I would suggest that the invitations have gone out. Have we got any reading on the response to those? I would have expected it to be quite heavy for the select committee for hearings. In fact, we were talking about sitting at night.

Mr. Jackson: They are already slotted.

Mrs. O'Neill: Yes, I know.

Mr. Chairman: OK. Richard Johnston.

Mr. R. F. Johnston: The only difficulty with the way we are wording this is talking about four weeks to deal with this in July, because then there is clearly a conflict.

There are a couple of alternatives we could look at. One is that we think we could need four weeks, and we are concerned about potential conflicts with the select committee because of the mixing of memberships. We can leave it open to them. As you know, an attempt is being made to adjourn the House by June 16. It is unlikely to happen before June 22 or something like that. Therefore, we may have a little bit of flexibility to play with here in terms of possibly moving up some time, depending on what we want to do on our first meetings around the Mental Health Act.

So I think if we were to put something slightly more vague to the House leaders, thinking that we need about four weeks and being concerned about that potential conflict with the select committee, that might meet our needs and they can have the flexibility.

Mr. Chairman: I was interpreting the opinion yesterday. What about something like "as soon after the beginning of the recess as possible"?

Mr. Allen: Well, I am going to go on strike, quite frankly, Mr. Chairman.

Mr. Beer: That means Richard will not cross the picket lines.

Mr. Allen: That is right; there we are. So I have got us both out of it.

Mr. R. F. Johnston: You guys will do a lockout after a while.

Mr. Allen: Of course, there is a problem. If we insist on sitting some time during the summer because there are crossover memberships with other committees, and since most of the other committees have staked out August, that means we automatically are going to be here, which means that the people who have dual memberships are going to be here for July and August if we go that route. Quite frankly, I just think that is inadmissible. I think members deserve holidays and I am going to take mine, for a change, this summer in July. I am sorry. I like all the things you are proposing to do.

Mr. Jackson: Mr. Chairman, if you love your job, every day is a holiday.

Mr. Chairman: I need some modest direction. By the way, I do not mention when. I can simply say that these are the things that have been suggested for possible discussion by the committee.

Mr. R. F. Johnston: Maybe it is just a personnel problem and we can work that out. If we were to ask for three or four weeks, that kind of combination, it might very well be possible for us to deal with most of the things before the select committee on education starts, and maybe do something in the late fall to finalize the results of our public hearings and deal with that in the last weeks, some time in September or October. That would be my guess that this can be worked out.

Mr. Jackson: One question I had was with respect to Bill 100.

- Although we talked to Mr. Ward—both Richard and I did today—to get an agreement to refer Bill 100 to this committee, I read from your motion it is implicit that it would be referred until our summer sittings, as opposed to our being able to deal with it before the end of the month. That is new information to me. Who drew that assumption?

Mr. Chairman: I did. I simply heard it mentioned yesterday, Bill 100. I had not heard the discussion today. Yesterday we were discussing the work during the recess, and the idea here is that things have been suggested. The other way would be simply to ask for work during the recess and not mention a bill.

Mr. Jackson: No. We have mentioned Mr. Reville and the matters which we referred from the standing committee on public accounts. Both those items I am very comfortable with. I referred to Bill 100 because I wanted this committee to be apprised and not blind-sided with new information, because I was working on something. My colleague and I were able to connect yesterday. We have talked to Mr. Ward. Tomorrow, when it is in the House, there is an agreement that we will refer it to this committee, so you will have that problem.

Mr. Chairman: My understanding was that we may well be able to do that before the end of the session.

Mr. Jackson: That is right.

Mr. Chairman: I have some sense of this, and if you trust me, I will phrase it accordingly.

Mr. Jackson: Could we put it in the form of a motion?

Mr. Chairman: By all means.

Mr. Jackson: I would like to do so. Franco will have no difficulty putting it in that form for me, but I so move. The motion is three or four weeks, early.

Mr. Chairman: Very good.

Mrs. O'Neill: Sitting time beyond the normal sitting of the Legislature. Are you going to put any qualifiers on it?

Mr. Chairman: Three or four weeks.

Mr. Jackson: Three or four weeks, as has been stated. I just want a motion for the chair to take to Mr. Conway that we desire to sit during that session to resolve those two items; "and any others that may be referred" is the standard statement.

Mr. Chairman: Mr. Jackson has moved such a motion. OK?

Mr. Jackson: Thank you.

Mr. Chairman: Does anyone have any points to make about that motion?

Mrs. O'Neill: We might have to have a steering committee meeting after the House leaders get finished with this.

Mr. Chairman: Absolutely. By the way, they may refer all sorts of other things to us.

Mrs. O'Neill: Some of us do have some of the same desires as Mr. Allen to have at least a week off this summer.

Mr. R. F. Johnston: We have tried to leave August open.

Mrs. O'Neill: It was a heck of a long summer last year.

Mr. Chairman: Is there further discussion of this motion? Those in favour? Those against?

Motion agreed to.

Mrs. O'Neill: Mr. Chairman, just for the record, I would like you not to refer to that brief as "Mrs. O'Neill's brief."

Mr. Chairman: I said "correspondence with Mrs. O'Neill."

Mrs. O'Neill: I thought you said "Mrs. O'Neill's brief." I am sure I heard those words, and I think I would like to have it "the brief sent to Mrs. O'Neill," just to make it clear.

Mr. Campbell: We have to go upstairs. There is a five-minute bell.

Mr. Chairman: Wait a second. On the next item that we have, it is my understanding that I should write another letter to the Attorney General (Mr. Scott). It simply is to say, further to our previous letter about the constitutionality matter, would he specifically address the implications of section 15. Is that understood? Would you prefer a motion? No? I will do that.

Further to the constitutionality matter, I believe we now all have the second of the reports that were mentioned. We have the Foucher report, and everyone has a copy of that, for the record.

Mr. Jackson: I notice that we have ordered up our time for Tuesday, I think it is, June 14. We will be doing clause-by-clause.

Mr. Chairman: That is right.

Mr. Jackson: Both the member for Scarborough West (Mr. R. F. Johnston) and I, as well as the Minister of Colleges and Universities (Mrs. McLeod), have been invited to a debate. We will not be in attendance.

Mr. Chairman: The way we have it is that we begin clause-by-clause on the 13th, the Monday, and we continue to the Tuesday.

Mr. Jackson: Yes, but as I understand it, unless the Attorney General can come on Thursday of this week, we will have the Attorney General for a considerable amount of time on the 13th, which means we will not complete it.

Mr. Campbell: We do have a time-limited bell.

Mr. Chairman: OK, we meet on Monday in this room after routine business on Bill 107.

La prochaine réunion du Comité permanent concernant le projet de loi 109 aura lieu dans cette salle, le lundi 13 juin, après la période des affaires courantes, vers 15h30. Je répète notre numéro de téléphone pour ceux qui désireraient obtenir de plus amples renseignements. Il s'agit des (416) 965-6834.

The committee adjourned at 5:54 p.m..

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT
CHILD AND FAMILY SERVICES AMENDMENT ACT
MONDAY, JUNE 6, 1988

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitutions:

Black, Kenneth H. (Muskoka-Georgian Bay L) for Mr. McClelland

Cunningham, Dianne E. (London North PC) for Mr. Jackson

Smith, David W. (Lambton L) for Mr. McGuinty

Clerk: Carrozza, Franco

Clerk pro tem: Manikel, Tannis

Witnesses:

From the Roberts/Smart Centre:

Plaus, Dr. Xavier, Executive Director

Murray, Cherry, Director of Clinical Services

From Justice for Children:

Irvine, Marie A., Executive Director

From the Metropolitan Toronto Police:

Dennis, Inspector John, Family and Youth Services Unit

Culleton, Staff Sergeant William, Family and Youth Services Unit

From Casatta Ltd.:

Kochendorfer, Diane, Managing Director

Szymanski, Ede, Program Manager, Casatta/Warrendale

Adam, Don, Staff and Program Manager

From Whitby Psychiatric Hospital:

Lazor, Dr. Alina, Director, Adolescent Unit

From the Ministry of Community and Social Services:

Sweeney, Hon. John, Minister of Community and Social Services

(Kitchener-Wilmot L)

Morin, Gilles E., Parliamentary Assistant to the Minister of Community and Social Services (Carleton East L)

Sheffield, Anne, Manager, Children's Services

Walker, Andrea J., Director, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, June 6, 1988

The committee met at 3:33 p.m. in room 151.

CHILD AND FAMILY SERVICES AMENDMENT ACT

Consideration of Bill 107, An Act to amend the Child and Family Services Act.

Mr. Chairman: This is the standing committee on social development and we are here to conduct hearings on Bill 107, An Act to amend the Child and Family Services Act, 1984.

Before we begin, for the benefit of members of the committee, I would like yet again to run through our schedule for the next couple of weeks so that we all have some idea of what we are doing.

As I understand it now—and I would be grateful for corrections or additions—this week, today, tomorrow and Thursday, we consider Bill 107, Thursday being the clause-by-clause consideration. Next Monday, we begin clause-by-clause of Bill 109. On Tuesday, we switch to Bill 100, and then on Thursday, June 16 and, if necessary, on Monday, June 20, we continue with Bill 109.

We welcome the Minister of Community and Social Services (Mr. Sweeney) who is with us today. We will ask the first delegation to come forward. It is the Roberts/Smart Centre of Ottawa. We have Dr. Xavier Plaus and Ms. Cherry Murray. I would be grateful if you would both give your names and affiliations clearly into the microphone for the benefit of Hansard before you begin.

ROBERTS/SMART CENTRE

Dr. Plaus: I am Dr. Xavier Plaus, the executive director of the Roberts/Smart Centre.

Ms. Murray: I am Cherry Murray and I am the clinical director of the Roberts/Smart Centre.

Mr. Chairman: Thank you very much. Please begin. By the way, you have a written version, I take it.

Dr. Plaus: Yes, we have and we have copies that we can give out.

Thank you for having us here today. For those who do not know, just a few sentences on what the Roberts/Smart Centre is. We are a children's mental health centre which deals with emotionally disturbed adolescents. We are licensed and funded by the Ministry of Community and Social Services and we have eight residential units, one of which is a secure treatment unit.

The Child and Family Services Act, as a piece of legislation on services for children, is clearly a landmark statute. It has been with considerable anticipation that we have looked forward to the long-awaited implementation of the section dealing with secure treatment. As one of the three agencies in the

province that have facilities to provide such secure treatment, the Roberts/Smart Centre is vitally concerned with the nature and impact of the legislation on our service delivery system.

The residential treatment of adolescents must be conceptualized within the context of philosophical and programmatic decisions that are already in place. An essential one is this province's commitment to group homes as a major vehicle for the delivery of a wide spectrum of care, treatment and correctional programs. The care of emotionally disturbed adolescents in homes in the community encounters considerable neighbourhood upset and opposition, of which you are all aware.

This policy on group homes is not only more economical than institutional care; it has been demonstrated to be more effective. However, this service direction requires backup options to handle those adolescents who are either in crisis or chronically disturbed and who cannot be maintained in the community. The CFSA and the amendments in Bill 107 provide these response options in a way which is well suited to meet the needs of the adolescents the centre is called upon to treat.

The Roberts/Smart Centre wishes to express its clear support for the current amendments, encourage their passage and ask for speedy implementation. We would like to comment on five issues in regard to the amendments: (a) the criteria for crisis submission; (b) the relevance of certificate of involuntary commitment; (c) the fairness of an administrative procedure; (d) a 30-day period; (e) equality of treatment for adolescents.

Criteria for Crisis Submission: Some adolescents are at such severe risk to themselves or others that a period of secure intervention is required. The secure treatment section in the CFSA appropriately provides an opportunity to address this need. For example, the centre currently has seven open-community residences. Occasionally, we have an adolescent in residence who gets into a pattern of escalating aggression which sometimes culminates in exceedingly dangerous behaviour. Under these circumstances, control is required.

At times, increasing the level of staff coverage is all that is necessary. At other times, however, secure control is essential. Similarly, the centre is increasingly called upon to respond to agencies which are attempting to cope with a range of extremely disturbed adolescent behaviour, such as suicidal acts, fire setting, physical and sexual assaults and even attempted murder.

From our perspective of crisis requests and admissions, although there are some adolescents who have committed a clear and unequivocal act that is a danger to self or others, this is not always the case. At times, an adolescent may be making threats which, on the basis of a psychotic condition, exceedingly poor impulse control or a distressed emotional state, would lead to the conclusion that the youth in question is genuinely on the verge of or at considerable risk of harming himself, herself or someone else.

Under the CFSA as currently written, the criteria for a crisis admission require the threat of an explicit act. Referring agencies continually express the frustration that an adolescent must actually attempt to hurt himself or someone else before help can be given. The amendments provide for a definition of a crisis submission that is highly facilitative.

Involuntary Certification: The Mental Health Act provides a system for dealing with individuals who require involuntary care. The question obviously arises, why not simply use the Mental Health Act?

Several comments are warranted: (a) The system is designed for adults; (b) the centre frequently gets calls from physicians who have adolescents they are unable to manage in a psychiatric hospital; (c) it has been our experience that physicians have been extremely reluctant to certify adolescents. Within the past year, for example, of 13 requests for long-term treatment, we were able to deliver treatment to only two adolescents, both of whom were over 16 years of age and consenting; (d) once in the secure unit, as a result of the controls and structure in place, an adolescent promptly settles down and the certificate is withdrawn.

Fairness of Administrative Procedure: An alternative consideration might be to employ the judicial system. It is clear that this is, of course, one possibility. However, from our perspective, the issues focally involved are not judicial, but rather are treatment oriented. We have received numerous requests to take adolescents from secure observation and detention units into our secure treatment unit. In one instance, we were asked to provide service for a young man who had tried to hang himself on eight separate occasions while in a secure detention facility. The staff in the O and D facilities feel that they are not trained, nor in a position to meet the needs of such adolescents.

In addition, a secure crisis admission can be most effective for a number of adolescents when it is immediate and when it is brief. Finally, the legislative amendments currently before you provide for a system of checks and balances. Upon admission, the child is given independent advice on the issue of his secure placement and he or she immediately can call for a review of that placement.

The 30-Day Period: In addition to the obvious concerns about the criteria and routing for admission, the next issue is the length of time an adolescent should be held in a secure setting. Difficulties with the current five-day period can illustrate our concerns. Many of the calls for secure crisis intervention come from other communities. Although these communities do not have their own resources to utilize, it is often not logical to transport a youth over a distance for only a five-day time span.

Further, often more than five days is needed to adequately assess the nature of the crisis and what the resulting treatment recommendation should be. Just obtaining key information from other facilities involved with a client is a very time-consuming task. The crises of the young people we deal with are of a very serious nature with multiple complexities. They deserve to have these complexities adequately addressed.

The provision of a 30-day period, in our opinion, would provide for the vast number of the adolescents who are in such a crisis that security is required. For this reason, we support the proposed 30-day period. In addition, when an adolescent is admitted on a secure crisis basis, a frequent agenda from the referring source is an assessment adequate to plan for the youth's treatment needs. Under such circumstances, it is our position that having the availability of up to 30 days to provide this assessment is essential to conduct a thorough evaluation.

Equality of Treatment: Some argue that the proposals included in the Child and Family Services Act and the amendments should not be supported because the treatment for adolescents demands equality with treatment for adults. However, we suggest that equality of treatment does not mean or cannot mean an identical approach. The adolescents who are in residential treatment are typically characterized by considerable developmental delay due to

deprivation, intellectual deficit and emotional immaturity, not to mention the mental disorder itself. Under such circumstances, they are most typically unable to make informed judgement on their own behalf.

Currently, for example, we are providing long-term secure treatment to three youths. One of our clients abducted a 15-year-old girl from a bus stop and repeatedly raped her at knife-point after viewing a movie depicting a similar event. The young man appeared genuinely amazed and saddened to learn that, as a result of this event, his victim changed from a straight-A student into a school dropout and that her previously well-controlled diabetes has posed a major health risk. Because of his difficulty in distinguishing fantasy from reality, he found himself surprised when things did not unfold as they had in the movie.

Our second youth suffers from paranoid thoughts and feelings which led him to stab his art teacher repeatedly in the face and neck with a screwdriver. As a result, the teacher was in critical condition for a time and is now left with permanent speech and voice impairment. This youth was keeping and continues to keep a list of people he intended to kill.

Another extremely aggressive and disturbed client is seven months pregnant and has made numerous attempts to self-abort, putting both herself and the unborn baby at risk.

This, in our opinion, argues for a treatment system that is explicitly geared to the developmental and psychological needs of adolescents and should be distinct from the adult system. As structured in the Child and Family Services Act and the amendments, for children under 16, guardian involvement and consent is clearly paramount but, at the same time, a procedure for hearing the adolescent's wishes is also provided.

Conclusion: The Roberts/Smart Centre wishes to support the amendments as provided in Bill 107 and requests, in the interests of providing necessary and appropriate treatment for disturbed adolescents in our province, that this bill and section 6 of the Child and Family Services Act be implemented as soon as possible.

Mr. Cousens: I appreciate your presentation and the fact that you are here and sharing with us your thoughts.

I know it does not fall under the jurisdiction of the ministry because of the way the federal act is written—at least I think that—but what happens after a secure, controlled environment is available to a child for a period of time and then he or she reaches 18? Are you still in a position to continue to provide services?

Dr. Plaus: For a brief period beyond 18, technically with the consent of the minister, which usually means the consent of the area director. Often we will carry a kid past his 18th birthday, say, for another six months. We actually had one young man until his 19th birthday.

Mr. Cousens: But there are not a lot?

Dr. Plaus: No.

Mr. Cousens: Where then do they go? You do not have jurisdiction over that, do you, John?

Hon. Mr. Sweeney: Normally not. But, as the doctor has indicated, if

a child is in our care in several capacities prior to the 18th birthday, we do have some leeway to carry him over beyond the 18th birthday; but again as Dr. Plaus has indicated, not for very long.

Children's aid societies can do that and children's mental health centres can do that, but there are limitations. They then have to pretty well move into the adult mode, and if it were a mental health problem, I presume a psychiatric hospital.

Dr. Plaus: Or psychiatrically oriented group homes for adults coming out of psychiatric hospitals. We sometimes try to tie into that system if we want to carry adolescents who are past 18 and we want to move them into some other group living arrangement in the community.

Ms. Murray: One of the things that is positive about the amendments, that we view as positive, is the fact that with the new amendments, there is something in place where you can have one extension after the 18th birthday. Prior to that time, when they passed the 18th birthday there could not be an extension if they wanted it. Now there can be one.

Dr. Plaus: This is for the secure treatment program.

Mr. Cousens: I guess that is the area I am concerned about. I had a short immersion into that program for a while. Are you satisfied that this amendment helps with that? Is it sufficient? Should we do more?

Dr. Plaus: I do not believe we need to do more. As the amendments, in conjunction with the original bill, are structured, I think they are going to give us an excellent vehicle for providing the kinds of services we are attempting to provide.

Mr. Campbell: If we can focus on the 30-day period that is recommended, in your experience, you have the five-day sort of evaluation-observation area and then a treatment time. In your opinion, what is the logic of the 30-day period? Is that a standard length of treatment? I know nothing is standard, so forgive me for the layman's language here. Is the 30-day period enough time to really effectively deal with the situation or are you going to be up against something on the 31st day?

Dr. Plaus: My view is that extremely rarely there might be a problem beyond the 30 days. But I think, as we put in the brief, we believe that for a very large number, the vast majority of the kids we are going to encounter, whom we have to handle in terms of the secure crisis itself, we can manage in the 30 days.

What is going to happen over that time, if in point of fact the adolescent is going to need secure treatment at any time, is that we could apply to the courts then for a hearing to have the kid placed on a six-month secure treatment order. Either we are going to settle the kid down in the crisis and make treatment plans to either move the kid back into some other system or find an alternative placement, or go for the secure treatment route.

We believe that 30 days gives enough flexibility to handle either direction in the time permitted.

Mr. Campbell: Would a shorter period of time still accomplish the same kinds of evaluation that you need to make that decision, say, a 14-day period or two 14-day periods or something like that, rather than having a blanket 30-day period that you tend to run into?

I guess what I am asking you is, in your experience, in the majority of cases that you would handle, would it take 30 days to do this evaluation or would it be done in a shorter period of time? Is it possible that it would be done in a shorter period of time?

Dr. Plaus: It is possible some of them will be done faster, for sure. I do not think there is any doubt about that. However, the more that people expect us to do an assessment—14 days is not very long to try to get a professional assessment.

The problem that is distinct from the adult system is, when you are dealing with adolescents, usually there are a number of other agencies involved. The children's aid society may be involved, as well as probation and special-ed services. If you want to try to get reports from all those agencies and maybe have a conference or two with them to try to put together a treatment plan, you really need a period of time. That is why we support the 30 days, whereas in two weeks it is sometimes pretty hard to get everybody together.

Mr. Campbell: I appreciate that. I was looking for the rationale for the 30-day period. Thank you very much.

Mrs. LeBourdais: I am not sure whether I want this question to go directly to you, Dr. Plaus, or to the minister. In the circumstance where a child has been placed in an institution but on the off chance the care giver was mistreating the child and hence caused a second runaway situation, what alternatives would be open to the child to seek yet another setting for treatment? I will ask you first, Doctor, and then I will direct it to the minister.

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Dr. Plaus: OK. Let me make sure I understand. The child is placed in a home and then abused in that home.

Mrs. LeBourdais: Yes.

Dr. Plaus: If that comes to the knowledge of any professional, he is automatically obliged, in law, to inform the children's aid society, which would immediately take the child out of that home and find another placement.

Mrs. LeBourdais: Would the credibility of the child be accepted at that point?

Dr. Plaus: It is automatic that the CAS would do an investigation.

Mrs. LeBourdais: I see.

Dr. Plaus: Whether they initially believe the child or not, they accept the child's word at first and prompt an investigation to take place. In that process, usually they would take the child out, particularly the older the child is. There are two issues here. You believe young children implicitly. With adolescents, particularly the kind of adolescents we work with, you have to be very careful, because by then, if they have been abused, they have learned how to use the system.

Mrs. LeBourdais: But there is a system in place to allow for that situation.

Dr. Plaus: Oh, yes, there certainly is. The children's aid society is very well structured to handle that kind of a problem.

Mrs. LeBourdais: I see. Thank you.

Hon. Mr. Sweeney: Dr. Plaus has handled the answer very well. I would just point out to Mrs. LeBourdais that there is another section of the act which clearly specifies the responsibilities of the children's aid societies whenever a report of abuse is made to them, and Dr. Plaus has responded along that line.

Mrs. O'Neill: I want to thank you both for coming down from our area to Toronto. We enjoyed your paper. Thank you very much.

Dr. Plaus: You are welcome.

Mrs. O'Neill: There are a couple of things I would like to ask you about, simply because, as usual, a lot of things around here are new to me, such as some of your terminology. On page 4, under "Fairness of Administrative Procedures," you mention the staff in the O and D facilities.

Dr. Plaus: The O and D facility is observation and detention. What it means is that when a judge has an adolescent before him on a criminal charge and he wants to detain the child, either to see that the child comes back to court or for the purposes of having an assessment or whatever, the child is placed there for a period of time. I forget how long the act says the judge can hold a kid in observation and detention, but it has to do with the judicial system as opposed to the treatment program, such as a children's mental health centre.

Mrs. O'Neill: But the act would give them more of an opportunity to come to you for the secure treatment.

Dr. Plaus: It is a separate system, you see.

Mrs. O'Neill: But you have tied it in there.

Dr. Plaus: If you want, you would have the observation and detention homes, and then you would have the detention facilities; for example, a secure-custody facility. The Roberts/Smart Centre has 12 open-custody beds.

If an adolescent is booked before he is charged, there could be an observation and detention. Then he is found guilty, and the judge could issue a secure-custody or an open-custody order. That is just whether it is open or locked.

We have open-custody beds in the Roberts/Smart Centre, but that is a totally separate system and that relates to the Young Offenders Implementation Act. The secure-treatment legislation is under the Child and Family Services Act, so that is entirely a provincial jurisdiction.

Mrs. O'Neill: Yes, I understand that, but you brought this body in here and I want to ask you how it ties in with how you see the act being a help in the observation-and-detention circuit, so to speak. You say here the staff do not feel they are qualified at the moment or do not have the right alternatives, or whatever you are saying here. I am sorry, I am having trouble.

Hon. Mr. Sweeney: May I help?

Mrs. O'Neill: Yes, please.

Hon. Mr. Sweeney: Correct me if I am wrong. The purpose of secure treatment, totally apart from a young offender, is to help a young person with a severe behavioural, emotional or mental problem. That young person, at the time of his or her need, could be in a detention centre or could be in custody. It is an accident that he happens to be there at that point in time. But if he needs treatment, totally apart from the offence, then Dr. Plaus is saying they could treat him, whereas the staff where that child happens to be at that point is unable to provide the treatment he needs. I think that is what he is saying.

Dr. Plaus: Yes. Those members of staff do not feel they are skilled to manage those particular kinds of adolescents, particularly when they are suicidal.

Mrs. O'Neill: And right now, they cannot refer. Is that what you are suggesting? I guess I wondered why they were brought in here to this brief.

Ms. Murray: There very often is an overlap between the two, because quite frankly, when you look at the criteria for secure treatment, there has been an act where they have put either themselves or someone else at severe risk. It is quite often the case that, whatever that act is—i.e., when we referred to one of the individuals we have with us, attempted murder—the act meets the criteria in terms of the severity, but the act is seen to be caused by the mental disorder. At the same time, there are also charges under the Young Offenders Act, so there has to be some kind of way to meld the two.

Mrs. O'Neill: So you see the act tying the two things together a little more tightly and clearly?

Ms. Murray: That is right, in a way that is much more viable than it has been up to now.

Mrs. O'Neill: OK. That is all. Thank you very much. I did not realize I was going to get so deep.

Mr. Allen: I appreciate the presence of the representatives from the Roberts/Smart Centre and, of course, all the representations that are going to be made this afternoon and tomorrow.

Naturally, as a nonprofessional, I have read this perhaps with nonprofessional eyes, and I must say I am not entirely happy with what I read in the amendments that are proposed. As I read this particular section, it suggests to me that a young person may be put in secure detention simply by virtue of the fact that he is a runaway. Is that true, in your eyes? Is that the way you read the amendments also?

Dr. Plaus: No. The simple act of running away, in and of itself, would not have that result. We have kids run all the time from the Roberts/Smart Centre, from all seven of our facilities, and if we were putting kids who were runners in secure detention, we would not have any room. It is the issue, at the same time, of putting themselves at risk in some circumstance.

We have one young lady who runs. When she runs, she runs out on to the main street and tries to throw herself in front of a car. That is a little different than some of our other adolescents who run and go to a shopping

centre or are gone for a couple of days. If a kid runs and it is a young lady and she starts going down to the market and hooking, then it becomes a different issue, putting herself in considerable risk in that circumstance.

The simple act of running, in and of itself, is pretty endemic with disturbed adolescents, so we would not view that as the kind of circumstance which would warrant putting a kid in secure crisis.

Mr. Allen: How do you know what they are running to do when they run?

Dr. Plaus: You have to work with them for a while and discover what is going on. It takes experience with the particular adolescent involved to kind of get to know what is going on and what is happening with them.

Mr. Allen: I also read the act, just as a layman, that although they have not committed any particular offence against any person, they may have uttered a threat of some kind, in itself apparent to violent proportions, but it may not be followed directly by any expressive act of aggression against a person. That youth also, on the basis of the amendments as they are written, could in fact be put in secure detention. Is that the way you would read it?

Dr. Plaus: There is no doubt that what you are responding to here is the quality of professional judgement. When we are talking about treating adolescents, adults or anybody, at some point you are talking about making a judgement, in this case, whether the adolescent is simply venting some frustration and expressing anger at an adult and issuing threats—which they do all the time—or whether there is some genuineness to it that would lead one to have grave concerns that something is going to go wrong.

When it comes down to that, somebody is going to have make a judgement. Do we take this as the kind of usual response an adolescent is going to make, when he is being cross at being told he has to come in or follow a curfew or go to bed or do whatever? Our adolescents use that kind of language all the time. You have to get used to how you are going to be talked to if you want to stay in the business.

Mr. Allen: But does anybody else in our society get locked up for issuing those kinds of threats?

Ms. Murray: In tandem, though, with the fact that there has to have been a threat to put someone else at severe risk, I think the very first criterion which is also a requisite with the other one is that there is the presence of a mental disorder. There has to have been someone who has previously determined that the youth has a mental disorder and that the mental disorder is of such a severity, or people have concerns that the severity of the mental disorder is such that the person may have difficulties distinguishing reality from fantasy, for example, or have other kinds of difficulties that would be quite aside from the normal adolescent, developmental, acting-out kinds of things.

I think the population of youths we deal with, which is really being addressed in the act, is a relatively small one but it is a very important population in terms of meeting their needs. I do not think we have met their needs adequately up until now.

But because of that statement, that there has to be a mental disorder, I think that takes away perhaps some of the concern that it might be just an adolescent acting out or an adolescent who is genuinely running from problems that are very real kinds of problems, as opposed to putting himself at risk or somebody else at risk because of the nature of the mental disorder.

Hon. Mr. Sweeney: May I make one distinction? I am not sure whether it is the choice of words, but there is an important distinction. The legislation permits a child to be put into secure detention if, and only if, and I will say he—it could be she—runs from an open custody or an open detention and in either case the child has been charged with an offence.

I do not think the act says—it certainly is not intended to say—that if a child runs from a treatment program, he can be put into a secure detention. It does not say that. If they ran from Roberts/Smart's treatment program, they would be returned to the treatment program. So when we talk about detention we are talking about young offenders. When we are talking about treatment, although it could be a young offender, that is not a requirement. As a matter of fact, I would say more often than not the young person is not a young offender. I do not know that for a fact, but I am suggesting it might be so.

Mr. Allen: Recently, in our mental health legislation we provided some new protections for the involuntary competent mentally ill patient with regard to consent to treatment. What protection is there for a young person who is involuntarily confined but competent, or could be said to be competent, when it comes to treatment? All that I hear at the moment is that there is a very big overlay of professional apparatus—in a group home, etc.—that is making all these judgements for this kid. I presume the other legislation kicks in at the age of 18.

Dr. Plaus: OK. If the amendments are passed, what would happen is that the adolescent immediately has to be informed of his or her rights and a lawyer provided and the Office of Child and Family Service Advocacy is informed, so that in point of fact the adolescent is capable of initiating a review immediately, and the amendments prescribe a time period in terms of this. There are checks and balances. The review takes place totally separate from, let's say, the Roberts/Smart Centre holding a kid involuntarily in a secure-crisis admission. OK? There is a separate system that looks at that whole issue.

Ms. Murray: As well, if they are over the age of 16, they have to be consenting anyway. There is not such a thing as an involuntary confinement.

Mr. Allen: As I understand the legislation, the review that takes place is by the Child and Family Services Review Board. Is that right? Since it is also possible for you to extend committal to secure detention after the age of 18 in some circumstances, I find it difficult to understand how it is possible, especially in the after-18 category, to continue to hold someone in secure detention without in fact going to the courts and having the proper legal procedure around that.

Dr. Plaus: May I make a distinction? I think you are mixing apples and oranges. We are not talking about detention. First of all, the extending beyond 18 is for a secure-treatment order, which has to go before the court. A judge can issue a secure-treatment order for six months and then one extension beyond the 18th birthday. That is the long-term, secure-treatment admission. OK?

That is different from the stuff we are responding to in terms of the amendments, which relate to a crisis admission. A crisis admission is for only 30 days. When, say, a parent consents to his son or daughter being placed in our secure-crisis unit, immediately then an administrative procedure kicks in for legal counsel to be provided for the adolescent and a review of that placement to take place. There are two separate streams here that, in our place, can be housed in the same unit, but one is the 30-day vehicle and the other is the six-months' secure-treatment order, which is by a judge.

Ms. Murray: As well, if a person is requesting the extension after 18, it would be the young person himself who would be requesting the extension of treatment. They have to be consenting once they are over 16, so it would be only that they themselves were requesting an extension of the period of time and not something that was imposed upon them.

Mr. Allen: As I understand it, also, under the amendments, any review of the young person's circumstances in secure detention would be initiated by himself. I really wonder whether that is the way it ought to happen. Should there not be an automatic review regardless of request?

Dr. Plaus: If I am not mistaken, this act says that any person may make the application.

Mr. Allen: But it does not provide for an automatic review.

Ms. Murray: Is this the 30 days that you are referring to?

Dr. Plaus: "Any person, including the child, may apply to the board for an order releasing the child from the secure-treatment program." What happens is that as soon as children are admitted, they are given their rights. The Office of Child and Family Service Advocacy is informed and the official guardian is informed. A lawyer is sent around to discuss his or her admission with the child and the lawyer could then request a hearing on behalf of the child asking the Child and Family Services Review Board to order the child's release. OK? So the mechanism is there.

Mr. Allen: But we pass that at the point of admission.

Dr. Plaus: That is right. The child has to be in the unit for this to kick in.

Mr. Allen: Yes, but how long can detention, in effect, continue? What is the length of time?

Dr. Plaus: If we are talking about a secure crisis, we are talking about 30 days.

Hon. Mr. Sweeney: There is another element of time in there, too. Given the fact that, for the most part, we are talking of two or three weeks on average, I gather, when these children are in there, if you tried to use the court as the review mechanism, the treatment program in many cases would be over before it ever got to the court.

One of the advantages of using the Child and Family Services Review Board is that you can set that up almost overnight. There was no sense in the legislation of denying the young person the right to go to court. There was a sense that in most cases the experience of places like the Roberts/Smart Centre is that by the time you got to court, that emergency treatment would in

most cases be finished. It is not a very practical way to do it. That is the problem. With the review board, we can set that up in two or three days if we have to, if we really believe it should be done. It is just a more practical application.

As Dr. Plaus has indicated, in that situation you are talking about only the short-term treatment. Once you get beyond that 30 days into long-term treatment, that must be a court hearing. That does not change. That is in the original legislation and that does not change.

Mr. Allen: Then what is the review process under the longer-term treatment or the longer-term detention?

Dr. Plaus: Up to six months.

Hon. Mr. Sweeney: My understanding is that the maximum time is six months. That can be extended once—or is it more than once?

Dr. Plaus: More than once.

Hon. Mr. Sweeney: But it cannot be extended for more than up to six months at a time.

Mr. Allen: In that context, as I understand it, the child then may request a review. The young person may request a review.

Dr. Plaus: It is not only that he may request a review—

Mr. Allen: Then it is in that longer period that there is a question of whether there should not, in fact, be an automatic, periodic review. I mean this young person obviously is under confinement. He is going to be under stress. I am not sure that he is necessarily entirely capable of, in fact, acting in his own best interests. Would it not be wise to have an automatic review—I do not know—once a month?

Dr. Plaus: I think maybe one of the things to recognize is that the subgroup of adolescents we are talking to, who are going to get an extended secure-treatment order, are very disturbed adolescents. We have one who has attempted murder. Another has committed rape. Another young lady has attempted to abort her baby. These kinds of adolescents are not going to change so rapidly that a review by the court every month makes much sense.

The other provision that is in the legislation, though, the Child and Family Services Act, is that we could discharge the adolescent from secure treatment at any time. That is one of the major differences between a secure-custody order and a secure-treatment order. With a secure-custody order, under the Young Offenders Implementation Act, if the kid gets six months, it is six months. You have to go back to court and have the order changed. Under a secure-treatment order, I could discharge the kid at any time to one of our open-custody units, so he or she does not have to stay in for the total six months.

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Mr. Allen: I guess I just have some reservations about an institution that has the right internally to keep that kind of a cycle going for a period of time without the outside intervention of an automatic review from an outside agency.

Dr. Plaus: There are several mechanisms of review though in place. The child, for example, could appeal to the Child and Family Services Review Board for a review of their situation.

Ms. Murray: There is the automatic review in essence once every six months because that is the maximum length of time that an order can be made.

Mr. Chairman: If I could ask that both the questions and the responses be brief. I am concerned about the other delegations.

Mr. Black: On page 6 of your brief, you deal with the equality of treatment issue and you identify some of the characteristics that you argue adolescents have that require that they receive equal treatment but also a different approach.

I would suggest to you that many adults who are in treatment centres would also exhibit those characteristics. There may be other things, however, that would require that adolescents be treated differently. Could you identify what some of those other factors might be?

Dr. Plaus: To me, one of the biggest factors when we are talking about an adolescent is that normal adolescence is a time of a lot of growth and change. So things that are going on during adolescence between say 12 and 16. An enormous number of things are happening.

If the process is too slow, for example, like in the courts, you get a lot of delays. In fact sometimes judges use delays to facilitate their own picture with the adolescent because the adolescent may settle down or begin to look a lot better. His lawyer will go back in and argue before the court that the adolescent has improved and grown up.

We are talking now about a stage of development where there are so many changes in growth experiences going on normally. That suitably normal part of the process is different from adults. I think we have to gear our system to adolescence as a stage of development. That would be the one separate thing I would argue besides the things we put in the brief.

Mr. Black: Thank you.

Mr. Chairman: Thank you very much, Dr. Plaus and Ms. Murray. We are grateful to you for coming here from Ottawa. Thank you very much indeed.

While you are leaving, and for your benefit and for other people who are from out of town, regarding the tapes of the committee hearings this week—today's will be played tomorrow morning I believe at 10 a.m.. But I think they will all be played on the legislative channel on Friday. I suspect that this time slot will be roughly 11:30 a.m. on Friday. Perhaps there are people in your region who are interested.

The next presentation is that of Justice for Children. Ms. Irvine.

Mrs. LeBourdais: Mr. Chairman, just prior to this lady beginning her presentation, I am wondering if I could just direct one question specifically to the minister. In my readings over the weekend, one thing that disturbed me was that we are addressing those 16 years of age and down as being children.

We are addressing those 18 years and older as being adults. I suppose because Saturday was my daughter's 17th birthday, as I read through

everything, never did 17 come up. Where does the child of 17 fall into all of this?

Hon. Mr. Sweeney: In our legislation, a child is a young person up to the 18th birthday, period. Now with reference to some of these amendments, we are talking of a child under the age of 16. That just happens to be the age group we are referring to. But a child in our legislation is up to the 18th birthday.

Mrs. LeBourdais: The necessity then for a 16-year-old who may be at risk, who has to be out with an 18-year-old approved by the parent, is that applicable to the 17-year-old as well?

Hon. Mr. Sweeney: No. Our curfew amendments and our runaway amendments refer to children under 16. They do not refer to children—still children—who are 16 or 17. They are still children but these amendments do not refer to them.

Mrs. LeBourdais: What does? What does then cover the 17-year-old runaway?

Hon. Mr. Sweeney: With respect to the specific amendments that we are dealing with, the secure treatment provisions refer to 16-year-olds and 17-year-olds as well, but the runaway provisions do not. They refer only to children less than 16. There are no runaway provisions for 16-year-old and 17-year-old children.

Mrs. LeBourdais: OK. Thank you.

Hon. Mr. Sweeney: It is just not there. The reason is that in Ontario, a 16-year-old can legally leave home, quit school, get married, I think, although none of mine have tried that yet. That is just tradition in Ontario, so we are not making any attempt at all to include in our legislation, with respect to runaway or curfews, those who are 16 or 17, even though they are legally still children. OK?

Mrs. LeBourdais: Yes. Thank you.

Mr. Chairman: Sorry about that, Ms. Irvine. We have your material, I think. If you would be so kind as to give your name and affiliation clearly into the microphone before you begin, we would be grateful. It helps the recording.

JUSTICE FOR CHILDREN

Ms. Irvine: My name is Marie Irvine and I am from Justice for Children. I would like to start by thanking you for the opportunity to present to the committee this afternoon. As I said, I am here on behalf of Justice for Children, or the Canadian Foundation for Children and the Law. We are the same organization.

I would like to start by saying that Justice for Children policies, as represented by the submission before you, are arrived at through a long and arduous process that involves some of our 600 or so members and our 20-member board of directors, an interdisciplinary board made up of professionals such as teachers, social workers, lawyers and child protection workers, who arrive at positions on different policy matters concerning youth after substantial discussions so that those positions do not represent the interests or biases

of any particular individual or particular group.

We also provide legal services to children in areas such as the child welfare legislation, secure treatment and other mental health issues, so we bring to you positions based on our representation of children in those matters, as well.

Before I start on specific recommendations concerned in the amendments, I would like to make several general observations as preliminary remarks.

The first observation is that our group, as may be known to some of you, was involved in a very real way with the long consultation process that led up to the Child and Family Services Act being implemented. We felt at that time that the act was a very progressive piece of legislation, even though I would point out that it was several steps backwards from the Children's Act that had been proposed before the Child and Family Services Act. Still, it was a great step forward in trying to define more specifically the situations in which society should be intervening in the lives of children and the family. It was very specific and it was based on conduct.

It also went a long way in terms of respecting and setting out the legal rights of children and youth. From that perspective, we were very dismayed to see the kinds of amendments which were proposed by this bill. It undermines the rights that were given to children originally. It also, from our perspective, is very parental-control focused and authoritarian in terms of the role it perceives for children in our society.

The second kind of introductory remark I would like to make is that we do not know the basis for the amendments. We have not seen the kind of information which was given to the ministry, so we do not know why the proposals are as they stand. I am, of course, open to being told I am wrong, but we suspect that the amendments were proposed on the basis of an interpretation of law that was given, not by our judges, where the law should be interpreted, but by children's aid societies, the psychiatric community and police officers.

In some cases and in some very important cases—and I am thinking now of the extraordinary measures provisions, including the secure treatment provisions—they are interpretations of law which has never been proclaimed. I want to say that really strongly: those sections have never been tried out. What we have here in these amendments is an attempt to take away rights given to children and youth that have not been tested as yet.

We are not the only group which has these concerns. We knew about these hearings three working days ago and at that time contacted some other groups that we thought might have an interest in the legislation. In that short period of time, I was able to get some documentation that I hope has been given to you—a letter from Parkdale Community Legal Services, a letter from Clayton Ruby's office and also a response from the psychiatric patient advocate office.

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Just as an example, I spoke to Carla McKague, who is a well-known psychiatric patient advocate who works with the Advocacy Resource Centre for the Handicapped. Carla gave personal support to most of our response but was unable in the time given to take the issues to her board, so what you do not have is the input of ARCH, which is certainly a group of well-known advocates

for the psychiatric patient community, including children.

I was able to get a letter from the others, and I guess the main thing they are saying is that these are really important issues. It is my understanding that you are going to hear from people today and tomorrow only, and I would really urge you to extend the hearings longer and to hear from other groups so that you will have well-rounded input.

I would like to point out as well that the groups I spoke to only heard about the hearings because we called them, not because they saw it in the paper. To my knowledge, there was only a bit of information in the paper, and that was the editorial against the amendments in the Toronto Star, so they really did not know the hearings were proceeding. They would like to present.

If you look at the Parkdale letter—I would just refer you to that letter—they did present formerly around the act and would like to be given a chance to present around the amendments and are asking that further hearings be scheduled. As well, the psychiatric patient advocate office would like to have time to present as well.

Before I start into the specific concerns that we have, I do not intend to read our response, although I assume it will become part of the record.

Mr. Allen: No, it does not.

Ms. Irvine: It does not, if I do not read it verbatim?

Mr. Chairman: With the committee's agreement, I would be glad to have this document which is before us, Response to an Act to amend the Child and Family Services Act, 1984 (Bill 107), May 1988, from Justice for Children and the address—that would be read into the record.

Ms. Irvine: Thank you. Might I also ask that the letters from Parkdale Community Legal Services and Clayton Ruby's office, as well as the psychiatric patient advocate office—

Mr. Chairman: With the agreement of the committee, we have no difficulty with that.

Ms. Irvine: Specifically, the first issue I would like to address is the so-called runaways amendment, the proposed section 40c. Justice for Children is opposed to this proposal for a number of reasons that are set out in our brief starting at page 2. I will just highlight some of the specific concerns that we have.

The first concern is, with respect, we really do regard this proposal as a major shift in ministry policy. There is no requirement here that a child be in need of protection, at risk or in any way endangered. There is no requirement that a child be a runaway, as opposed to simply not being at home, perhaps after having had a fight with a parent. Parents are given an absolute right to control the liberty of their children and are invited to use the state to enforce that right.

At this point, we also would like to point out several potential Charter of Rights challenges to the provision as it now stands. We submit that it invites challenge under section 7 of the charter, with its requirement that apprehensions be in accordance with fundamental justice; section 9, with its requirement that apprehensions not be arbitrary; and section 15, with its

guarantee of equal benefit and equal protection of the law. We raise that for the committee's consideration at this time.

Our second main point with respect to this provision is that we find it to be superfluous. The group of children at which the amendment is aimed are not necessarily at risk and are not out past midnight. In our view, the present legislation gives ample power to police and to the children's aid society to apprehend any child under the age of 16 they reasonably believe to be at substantial risk. As well, the curfew provisions allow the apprehension of children between the hours of 12 and 6 a.m., whether or not the child is perceived to be at substantial risk.

Third, in our experience, children do not run away from home for no reason. There are problems in the home. At least, the kids we see in our office who run are running because of problems at home. The amendments do not address these problems and may in fact result in children being returned to abusive environments.

One thing that should not be assumed is that if the police apprehend a child, the child is immediately going to tell them if there is abuse going on at home. We have many, many children who come to us for assistance for another problem and months later will disclose to our social worker the abuse that is occurring at home. So, with the greatest respect, the chance of the police apprehending that child and the child saying, "I'm being abused at home," is very minimal.

In our experience as well, these children often run to a place that is safer than the home they are running from. The provisions would allow them to be apprehended from these places of safety.

The last point on this section is that it invites parents to use the police to enforce custody orders against such people as aunts, grandparents or other family members. We submit this is an inappropriate use of child welfare legislation and should be left to custody legislation.

If in spite of our submissions, this proposal is implemented, we set out on pages 3 and 4 of our brief recommendations with respect to its present form. I am going to highlight one of them and I will leave you to read the rest. The one I am going to highlight is with respect to the grounds for the issuing of warrants to apprehend children.

We recommend here that any warrant should be made by a judge and should be based on the judge's objective assessment that the child is at risk. We believe this because before issuing a warrant which will involve apprehension of a child by the state, the decision-maker should be satisfied that the grounds to believe the child is at risk are both reasonable and probable.

On page 4, we have set out recommendations with respect to the issuing of warrants without specifying premises where the child is located. I can see the practical need for issuing warrants for a child who may—you cannot say at Dundas and Yonge Street if 10 minutes later the child is going to be at Queen and Yonge Street. We do not have any problem with issuing a warrant that does not name the place.

Our problem comes when you will issue a warrant for residential premises that do not name the particular premises. We would be opposed to the issuing of warrants in those circumstances. As I say, often children are in a safe place; they are at an aunt's or a grandparent's. In those circumstances, if a

warrant is going to be issued, it should name the specific premises.

We also make a specific recommendation concerning the definition of residential premises and we would recommend that these be defined to specifically include hostels and shelters. We say this because young people view these shelters and hostels as a safe place to run to and they should not be deterred from using them.

Our comments with respect to the protection from personal liability of the police and child protection workers are set out in our brief, on page 5. I would refer you also to the psychiatric advocate's comments, on page 2, which support that position.

With respect to secure treatment, we have set out our comments on pages 5 and 6 and in the psychiatric advocate's response. You will find them on pages 2 and 3. Our main point with respect to placing a young person in secure detention is we believe that power should be limited to situations where there is a real concern about danger. With the greatest respect, we do think that it is open to place a child in secure detention based on being a runaway alone, the way the provision stands.

My final comments relate to the secure treatment provisions, and they are set out on pages 6 to 9 of our brief. This is the section I spoke about when we were talking about legislation that has not been tested. These sections have never been proclaimed and the amendments would take away rights given to the children in these circumstances without having tried them out first.

The first concern we have is around the grounds for emergency admission. They would be amended to expand the criteria to include a threat. As well as expanding the criteria in this manner, the amendments would remove the requirement that the act for which the child is admitted to secure treatment must have been committed within seven days preceding the application.

This, in our view, allows the admission of a child to secure treatment based on a threat that was made a year or two years prior. As unlikely as that would seem, it could potentially happen, and that is of concern to us. Clearly, a year-old threat is no longer evidence that a young person is of imminent danger to himself or herself or to anyone else.

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I would just like to talk a little bit about the philosophy of the act with respect to this issue. In our view, one of the philosophical premises the act was passed on was that conduct and acts for which intervention was appropriate would be specifically defined and provable. In our view, this move undermines that philosophical premise and the rights of children.

With respect to the requiring of the consent of a young person to an extension of committal past the age of 18, we are opposed to the provision that would allow the physician to apply without the young adult's consent. This concern is shared by Carla McKague and is also referred to and supported by the psychiatric patient advocate office.

With respect to the forum to hear applications, we set our concerns out on page 7. We are opposed to removing the jurisdiction from the court and placing it in an administrative tribunal. We also looked for and did not see any automatic right of appeal, and that is a concern as well when you are

going to have the hearing given to an administrative tribunal.

We are opposed to this move, as we believe the proper forum to determine whether a young person should be deprived of his or her liberty and be placed in a locked facility is the court. We believe that young people have the right to be dealt with in these circumstances in a forum that is clearly independent and is not connected with the ministry.

With respect to automatic review, we are opposed to the proposals here as we believe that review in these circumstances should be automatic. You should not expect children to make an application at a time when, quite clearly, their stress level is quite high. Here I would just like to compare it, as an aside, to the Mental Health Act. The Mental Health Act provides for automatic review of commitment under its provisions. You might note that not only is automatic review required, but also the patient cannot waive the hearing.

Page 8 of our brief talks about the proposals concerning the right to legal representation for children in secure treatment hearings, and would require official guardian involvement. The implication, with the greatest respect, is that young people in these circumstances would not have freedom of choice with respect to their legal representative. We would recommend that official guardian involvement only be required where the young person has not obtained counsel on his or her own.

Further, we point out that there is no right to counsel under the proposed amendments until after five days have passed. Section 10 of the Charter of Rights and Freedoms gives a person who is detained the right to retain and instruct counsel without delay.

With respect to the provision of psychotropic drugs, we are opposed to the changing of the word "any" to "the" and we set out our reasons in our brief at page 8. The use of psychotropic drugs is an extremely intrusive procedure, and we believe that young people have the right to be informed of any possible side-effects before their use.

My final comments relate to the provisions regarding disclosure of records. They are set out on the last page of our brief. First, we think the proposed section 166a is unnecessary, as section 166 of the act as it now stands adequately addresses the disclosure issues.

The second concern we have is the breadth of the meaning of "record of a mental disorder," which presumably would include any person who made any record concerning a person's mental disorder. We compare it for you with the Mental Health Act, which limits a clinical record to the record compiled in a psychiatric facility. We would like to see this be much clearer if it is going to be implemented.

My final point relates to the requirement that applications for disclosure be made to the Divisional Court. Presumably, this applies to a review of emergency secure treatment, in our view, rendering the review meaningless because of the inability to obtain relevant records in a timely fashion. Surely, time is of the essence in matters involving deprivations of young persons' liberty.

Those, subject to your questions, are my comments.

Hon. Mr. Sweeney: Can I make two or three points of clarification,

just to be sure that we are on the right track? Ms. Irvine, when you were talking about the official guardian, my reading of the legislation says that the official guardian is not required to provide the legal service himself but rather to ensure that it is being provided by someone.

Ms. Irvine: I believe that the official guardian is to provide services unless the official guardian thinks that the child's choice is valid. So if a child has chosen his or her own lawyer, it is up to the official guardian to decide whether that person is appropriate to act.

Hon. Mr. Sweeney: That is an appropriate choice.

Ms. Irvine: That is certainly my reading.

Hon. Mr. Sweeney: OK, let me come back to you on that one. With respect to the five days, I believe the wording is "up to five days," not "five days." In other words, it has to be done within five days; they do not have to wait for five days.

The other point I would want to make is that we do not have the form yet—I guess it is in the drafting stage right now—with respect to regulations and the justices of the peace issuing the warrant. There will be a section speaking specifically to the information on risk. In other words, when the parent or guardian applies to the justice of the peace for a warrant for a runaway, there must be a component in there where risk is established. They cannot just ask for the warrant. They must, obviously, to the satisfaction of the justice of the peace, indicate that there is risk involved. Whether that meets your concern, I do not know, but I just wanted to be sure that you knew that was part of it.

Ms. Irvine: It does not meet my concern. Would you like me to respond now or later?

Hon. Mr. Sweeney: I think my colleagues would rather ask you questions. I just wanted to be sure we were all talking about the same thing.

Mr. Allen: Might as well respond to the minister's point.

Mr. Chairman: Sterling Campbell is first. Have you any objections?

Mr. Campbell: No.

Mr. Chairman: Ms. Irvine, would you care to respond?

Ms. Irvine: First of all, we do strongly think that the warrant should be issued by a judge as opposed to a justice of the peace because of the complex family issues that are involved.

Second, it does not require the decision-maker to make an objective finding concerning the validity of the grounds. The parent can think they are reasonable and the decision-maker can disagree, but I do not see that there is a discretion there.

Hon. Mr. Sweeney: He does not have to issue the warrant if he does not believe that there are reasonable grounds to issue it. It is not a requirement for him to issue the warrant.

Ms. Irvine: The parent may think the grounds are reasonable, and I

am not sure that there is any requirement on the decision-maker to go any further and think, himself or herself, that they are reasonable.

Hon. Mr. Sweeney: My understanding is that there is, unless one of my staff wants to correct me on that. The issuing of the warrant is not automatic, am I right? If the justice of the peace is not convinced that the reasons given by the parent are valid, including risk, then he may refuse to issue the warrant.

Ms. Irvine: One hopes that is a correct interpretation.

Hon. Mr. Sweeney: Thank you.

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Mr. Campbell: I guess we all have concerns about perceptions of what is in legislation and what actually comes down to the final draft: how it is done, how it is enforced, how it is dealt with and what the interpretations are. I guess that reflects some of the concerns.

Let me turn to some specifics. In item 1.d. of part II of your submission, under "Response to Specific Proposals" you say, "In our experience, when a young person runs from home, there are generally problems in the home." When you say "problems in the home," they could run from "I want you in at 10 o'clock " or "I want you to do your homework" to abuse. Let's run the gamut. Is that a fair interpretation of what this means here?

Ms. Irvine: That is right.

Mr. Campbell: In other words, what are perceived as problems may run the gamut from normal parental discipline and saying "I want you to do certain things" to abuse.

Ms. Irvine: That is right.

Mr. Campbell: So when you say "a safer environment," it may not necessarily be. If you use the first part of my premise, that it is a homework situation, it may be going to the boyfriend's or girlfriend's to stay there and it may not necessarily be safer.

Ms. Irvine: Theoretically, that is correct.

Mr. Campbell: I just wanted to clarify if that is what you were doing. All right.

Let's deal with abuse now. In the abuse section, and I think this is probably where this comes down, it is where there is abuse at home and the child will not admit to the police officer or social worker or whatever other system you have in Metro that there is a problem in the home of a serious nature: physical or sexual abuse or mental or emotional or psychological abuse.

In that environment, in your experience in this area, what percentage of the children you would see would be in any of those categories, as opposed to the first one I mentioned? Let's say we have 10 kids. How many would be in the serious abuse situation and how many would be discipline kinds of cases?

Ms. Irvine: We are talking now about kids who approach us for any kind of problem.

Mr. Campbell: I appreciate that.

Ms. Irvine: I could not give you a number. Certainly, with kids who approach us because they have run away from home, I would say the highest number would probably be suffering from some sort of abuse in the home. But we would not be fair to take our experience and base the law on that alone, because if they approach us at all, the situation has to be quite bad. If it is simply a case of a child to whom the parents said, "You have got to do the homework," and he ran out the door, he is not going to come to Justice for Children, because he is going to go home.

I would be very interested—and I do not know if they exist—to see some sort of statistics that tell us, in terms of runaways, how many of those kids go back within 24 hours. My guess is that the kids who are not suffering abuse at home are probably going home in 24 hours, and I do not know that you need this piece of legislation to address them.

Mr. Campbell: OK. I do want to focus on a few things. I suspect you are probably right that the kids who have a perceived—and I do not want to minimize this—problem at home may not necessarily have a problem of the serious nature I mentioned, but are trying to get back at some parental guidance and discipline.

You mentioned runaways being apprehended by police departments and undue force—I do not know where it is in here; I cannot find it this quickly—

Ms. Irvine: I believe it is item 1.c.

Mr. Campbell: In your situation, you had one case where you had made a successful intervention on the situation. Could you elaborate on that a little more? I was not sure I understood—

Ms. Irvine: On this particular case?

Mr. Campbell: Yes.

Ms. Irvine: It involved a young person who was—well, there was some confusion, which was part of the basis of the case, but the police had apprehended her. Then the legal issue was also around the fact that the police had arrested her. We challenged that they could not arrest in the circumstances. Regardless of that legal point, she was apprehended, fought back because she did not want to go with them—this was the Eaton Centre case, of course—and kicked the officer, and in turn she was charged with assault against the police officer in circumstances where this should not have arisen, because there was not any power to arrest her.

I think what you do is set up a confrontation to allow apprehension in so many cases where it is not justified, and the child is going to fight back. You are setting those kids up for this confrontation with the police. I go back to your problem again about a lot of the kids who have run away when it is a plain disciplinary problem between the parent and the child. I do not think we should be sending the police out to apprehend those kids if it is clearly a problem of discipline.

Mr. Campbell: I could go on with discourses on philosophy in that situation, but I want to let others have a chance, given the time constraints we have. I want to key in on a number of items.

I am not from Metropolitan Toronto, so maybe it is a little different where I come from, where, of course, the police would probably not be called into that circumstance. There would be some settlement, something would be figured out, whether the children's aid society was brought in temporarily, the police department or whatever.

It seems to me that you are saying in your brief that every single case or many cases are confrontational in nature with the authorities. In fact, you cite one case, and I expect you use it as an example rather than saying this is the general rule. Some people at any age may feel they are being hard done by and resist being with an officer of the law, which does not necessarily mean, one way or the other, that they are in trouble. They just do not go along willingly and the officer has to use a little extra force to have that person do what he is supposed to do.

Ms. Irvine: Under criminal law.

Mr. Campbell: I just wanted to ask you whether this is common. Is this an example that you are using of what could happen or is it, in your eyes, a common practice that officers would lay charges of resisting confinement, arrest—whatever word you want to use—in what you seem to think is a simple runaway case?

Ms. Irvine: It is really hard to say. I think that is something the police would have to answer. We are not inundated with cases like that but we have had more than one, not a high number. Generally, I think, in fairness to the police, the charges probably are not laid, but they do happen.

Mr. Campbell: One last question, Mr. Chairman. I am sorry to monopolize the time but I am keeping my eye on the clock as much as I can.

When you are dealing with the rights to legal representation—I think the minister answered part of the question, saying up to five days rather than saying after five days. I think that was the tone or what you felt, what was in your brief. When it says that a child has no right to counsel until five days have passed, are you satisfied with the explanation from the ministry staff that it is up to five days and not after five days have passed?

Ms. Irvine: It allows it to be up to five days, so I think there is still a potential challenge.

Mr. Campbell: Disclosure of records is my last point. When you say, "We are astounded by the breadth of the definition of 'record of a mental disorder'," what people would you include beyond professional psychiatrists or psychologists who would be dealing with this person?

Ms. Irvine: What do we think?

Mr. Campbell: Yes. It says, "Presumably, it includes any person who makes any record concerning a person's mental disorder."

Ms. Irvine: It could include anyone who wrote anything about the child's mental condition. It would not have to be a professional person working with the child, theoretically.

Mr. Campbell: So you are saying that if somebody is called as a witness in a situation and says, "I think the person is crazy," that would be part of the person's—

Ms. Irvine: Theoretically. It is that broad.

Mr. Campbell: Let's talk practically, because I think that is where this act is coming from. Perhaps the minister's staff could comment on that once they are finished there. What other people would you include in that? Could you give me a specific person other than a psychiatrist or psychologist who had charge of the young person?

Ms. Irvine: Who could claim protection under this section? Is that what you are—

Mr. Campbell: No. I am asking who somebody else would be. You say, "Presumably, it includes any person who makes any record concerning a person's mental disorder."

Ms. Irvine: It could include a schoolteacher. I think it could, theoretically.

Mr. Campbell: I am satisfied. Thank you.

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Mr. Campbell: I am satisfied. Thank you.

Mr. Cousens: I will be very brief. I have heard of Justice for Children before, but this is the first time I have met someone from the group. You have had a fair amount of visibility. I would like to get a copy of your charter and what your principles are, something of the background of whom you represent and something of your thinking. It would be important to me because of where you are coming from.

I happen to agree with some of your points but strongly disagree with others, so I would be interested in knowing just what your statement is for children. The one that I have a sense of concern about, and we will have to come back to it I know, but I circled it, is that the amendment can lead to abuse by authorities. I guess to me, if there is anything that is underlying your concern, it is that potential abuse of the law and so on.

I do not think we have time. I am just commenting because it is a subject of concern. I know that we all have that concern. I have sensed that from the minister as well. I will not go further than that but I would like to get a copy.

Ms. Irvine: Happily.

Mr. Smith: That was a little bit of what I want to ask too. They are for justice for children, but I want to know what part they felt the parent played in this scenario. I find this a very sensitive issue.

I just had a 40-minute call from a parent. We were talking about a 15-year-old daughter under the custody at the time of children's aid. She ran away from children's aid and is down here now in Toronto, they tell me. I want to know how far you go, whether to allow the parents more rights or the child more rights. I find this a very, very sensitive issue. It is a little along Mr. Cousens's line of thought. I will drop any further questions.

Mr. Allen: I do not want to take much time, but I do want to thank Justice for Children for coming. I have worked with Justice for Children on a

couple of issues. I found that they were right in all their legal points in both those cases, so I have some trust in their judgement.

I gather from listening to your whole brief and looking through it that across the board you prefer the act as it stands to what we have here in terms of the amendment. Is that right?

Ms. Irvine: That is correct.

Mr. Allen: And that is almost without exception?

Ms. Irvine: Yes, I think it is without exception. I could go back and doublecheck, but I think so.

Mr. Allen: Yes. I thought so as I heard you.

Second, I would like to hear the minister respond to the comments with respect to the section on runaways because, as I listened to you, I felt some of it was rather convincing to me. I wonder if the minister cares to comment on that himself.

Hon. Mr. Sweeney: We have indicated very clearly that in our judgement the parent of a child under the age of 16 is legally responsible for that child. As a matter of fact, that parent can be charged if he or she does not provide the necessities of life for that child.

At the age of 16 the child can freely leave home, so we believe that there should be a provision for the parent to go to the justice of the peace and say, "Look, this is the situation," to make his or her case. The justice of the peace can agree or not agree. If there is agreement that the parent has made the right case, then a warrant is issued and the child is either returned home or to a place of safety.

We do appreciate that there is a difficulty in the child's not revealing that there may be a problem at home. However, we are asking the justices of the peace, in terms of making their decisions, to include that as part of the discussion, to clearly ask: "What is going on at home? Why did this child leave?" It is not just "Is the child at risk?" but "Why did he or she leave?"

I want to be sure that people understand that the justice of the peace is just not going to make an automatic decision. He or she must be convinced (a) that there is risk involved here and (b) that in fact the parent is not part of the problem rather than part of the solution.

The other thing is that we have had, as I indicated before, discussions with the various police forces across the province. They have clearly indicated to us that when they do pick up this child, the first question they will ask is, "Why did you run?"

That is no guarantee the child is going to tell them. All I can say is that we have done everything we can other than forcing the child to talk, which we cannot do, to try to get at that particular piece of information. We think in most cases it is going to work, that there is a legitimate concern about children being on the street, there is a legitimate right of parents to protect their children and there is a legitimate responsibility of our police forces and our child protection workers to apprehend a child who is deemed to be at risk. The existing legislation simply is not doing that.

As Ms. Irvine said, while there is one section that has not been

proclaimed at all, this section has been proclaimed. We have had roughly two and a half years' experience with it, and everyone who is responsible simply tells us it is not working the way it ought to work. Our sense is that if it is in the best interests of the child, that is the primary concern. It says in the preamble to this legislation that that is above and beyond everything else.

It says even in the principles at the beginning of the legislation that the best interest of the child takes precedence over the parents. If the best interest of the child is what is guiding us and we are concerned about that child's best interest in this case, it is not working and we have to come in with this amendment to make it work more effectively.

It is not a substantial change, in my judgement anyway, although not everyone is going to agree with that. It is simply saying, "What is best for that child?" That is why we do it. I think we have built in the kinds of protections that reasonably can be done. I cannot give you guarantees. The existing legislation has no guarantees in it. That is part of our difficulty as legislators. We take all the information we have at a point in time and we try to draft legislation to meet its needs. We find out frequently in this place—I have been around here 13 years now—that what we intend and what in fact happens are not always the same.

Can I just make one comment? I did check with my staff, Ms. Irvine, about the role of the official guardian. It is not his right to question the quality of the legal counsel but the fact that it is there. As you know, within the 24 hours, the child advocate—I cannot remember the wording exactly, but I think it is something like—"in the shortest possible time or as soon as possible must make contact with the child."

The child advocate can and frequently will provide or see to it that legal assistance is provided to the child. The official guardian's responsibility is, within that five-day period, to convince himself that in fact that has been done. If it has not been, it is his responsibility to move in and do it. If the child himself or the child advocate or the parent, or whoever, has provided legal counsel for that child some time within that five days, then the official guardian just recognizes that has been done. If it has not been done, then it is his responsibility to see to it that it is done. The legal counsel could be available within two days, within three days.

Ms. Irvine: I am not convinced.

Mr. Allen: I am still rather troubled about the justice of the peace and the warrant and the parent. I gather the justice of the peace simply listens to the parent and tries to assess what the parent says and that that is the evidence. I am really not very convinced that in the kinds of circumstances one is talking about, one is going to get a genuine statement from the problem-parent situation or problem-family situation.

Hon. Mr. Sweeney: I hear your concern, but I do not know how we can guarantee—unfortunately, the other side of the equation is the child, and the child is not there to speak for himself or herself. It is not until the child is actually picked up that we get a chance to hear what he or she has to say. I wish it were otherwise, but that is not the reality we have to deal with.

Mr. Chairman: Ms. Irvine, you can see your presentation has generated a certain amount of interest. We are most grateful. Thank you very much indeed.

The next presentation is the Metropolitan Toronto Police. I believe we

have Inspector John Dennis and Staff Sergeant William Culleton. Gentlemen, if you would come forward. My understanding is that we do not have a written brief in this case. I would be grateful, when you are settled, if you would each give your name clearly and your affiliation for the benefit of Hansard, please.

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METROPOLITAN TORONTO POLICE FORCE

Mr. Dennis: My name is John Dennis. I am the officer in charge of family and youth services for the Metropolitan Toronto Police department.

Mr. Culleton: I am Staff Sergeant William Culleton, and I am currently holding the position of administrative staff sergeant in family and youth services of the Metropolitan Toronto Police.

Mr. Dennis: The Metropolitan Toronto Police Force has always been proud of its procedures and policies that relate to missing and runaway children. These policies provide for weekly updates on all outstanding children and have an officer of family and youth services liaise with outside police forces concerning runaway children who run to Toronto.

Our force identified major flaws in the Child and Family Services Act from the time of its inception. One of the major concerns was proving substantial risk. The other concern was determining, when a child was accompanied by an adult during curfew, whether the adult was a responsible person. Though policemen are not lawyers, we do enforce legislation and become quasi-experts in the practical application of the law. In the end, our interpretation of "substantial risk" was supported by the lower courts.

Sexual and physical abuse are reasons for children leaving home, but there are other reasons, including family breakdown, restrictive parents, school pressures, peer pressures and individuals seeking independence or excitement on the street. Parents regularly call family and youth services for advice, support, assistance in locating children or receiving counselling for themselves or their children. The majority of parents do care about their kids.

Finally, as a police officer, I know that the longer the child stays on the street, the greater the chance that the child will become involved in crime. During 1987, a federally funded research project was conducted in the Metro area. The researchers worked with my unit and this is one statistic that we took out from it: there is a total of 4,105 children reported missing in Metropolitan Toronto, and 319 of these children ran more than four times.

We analysed these data on children who ran away more than four times and we randomly selected 27 male and female names and checked to see if they had criminal records. Remember, these kids are under 16. The result was that 19 of the 27 young people had been convicted of offences such as prostitution, robbery, break and enter, assault, etc. These statistics concerned me as a police officer and indicated to me that we must break the running cycle. We need the legislation to do it before the young person runs away and becomes involved in crime in order to survive on the street.

On Saturday I attended a workshop with a parents' support group. They are very pleased with the new legislation because they feel they want some say in what happens with their kids, and finally they can do something. With that, I would like to respond to Mr. Johnston's comments from the Hansard report.

Before addressing specific sections of the Child and Family Services Act and the proposed amendments to which Mr. Johnston refers, I would like to comment on his remarks concerning the right-wing reaction of the police force to the legislation and the deliberate misreading of the legislation that was passed.

The powers conferred upon police officers under this act were not sought by the police force, but since the legislators chose to give police officers certain powers of apprehension of children, it is incumbent on our force to ensure that these powers are workable. The reactions of the force to the legislation were not of the knee-jerk variety but were born of frustration in both attempting to enforce the legislation and attempting to answer complaints from parents.

If one were to take Mr. Johnston's contentions at face value, it might appear to the casual observer that the police were deliberately misreading the legislation, but such is not the case. Mr. Johnston contends that the Ministry of Community and Social Services has given clear instructions to the police about the powers the act gives them. These instructions are contained in a "little blue book," which was produced by the ministry in 1985: The Child and Family Services Act and Ontario Police Officers.

The subsection dealing with the apprehension of a child without warrant by police officers, subsection 40(6), can be applied only in cases where there would be a substantial risk to the child's health and/or safety during the time necessary to either apply for a hearing under subsection 43(1) or to obtain a warrant under subsection 40(2). The problem in applying the provisions of subsection 40(6) in any given situation centres on the meaning of the term "substantial risk."

Mr. Johnston goes on to say that ministry has provided a definition of substantial risk for the police, that is, that the risk must be real or actual as opposed to imaginary. The courts have applied quite a different interpretation to the term, however.

In the case of the Catholic Children's Aid Society of Metropolitan Toronto versus Patricia L., Judge Hawkins of the district court, judicial district of York, upheld the interpretation of Judge Felstiner of the provincial court, family division. Judge Felstiner had interpreted "substantial risk" as being more than significant. This case did not involve an apprehension under subsection 40(6) but a custody hearing under section 47.

Subsection 47(3) states, "The court shall not make an order" of custody "unless the court is satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to the child's health and safety..." The court went further and said that the burden of proving substantial risk on the part of the children's aid society is almost massive. Following this reasoning, would not the burden placed on a police officer who is called upon to justify an apprehension on reasonable and probable grounds of substantial risk be just as massive?

Mr. Johnston states that a police officer can interpret his grounds in as broad a way as he needs to save a child in need of protection, and he will not be liable for any kind of civil action. While it is true that the subsection protects child protection workers or peace officers from personal liability, it does so only if the act is done in good faith.

As the district court decision referred to interprets "substantial risk"

very narrowly, it would seem to place a heavy burden on police officers to establish reasonable and probable grounds. The protection afforded by subsection 40(13) might not apply in cases where an officer was unable to prove he or she had the necessary grounds, even if acting out of genuine concern for the child.

Even if it can be argued that the protection against civil action under subsection 40(13) would apply in the above situation, there would be no protection against a charge of assault if force were used in the apprehension of a child. While section 25 of the Criminal Code affords protection from both civil and criminal responsibility to persons acting in the enforcement of the law, it does so only if the person is acting on reasonable and probable grounds.

If a police officer apprehends a child under the provisions of the Child and Family Services Act and must use force to do so, he or she loses the protection of section 25 of the Criminal Code. If it were established that the officer did not have reasonable or probable grounds, he would thus be open to a charge of assault. Even if the provisions of the criminal or civil law were not involved, an officer could still be the subject of a complaint lodged with the public complaints commission concerning his or her actions.

With respect to Mr. Johnston's remark on a question of curfew in the proposed amendments to subsection 75(5), I would reiterate that if the Legislature feels a curfew is valid and gives the police the power to apprehend children who are violating the curfew, then it must make the subsection as precise as possible. The proposed amendment to this subsection is a vast improvement over the current subsection, in that it replaces the responsible adult with someone 18 years of age or older who has been specifically authorized by the parent.

I have to agree that there are potential problems, even with this improved version, in the case where the parent might not be available to verify the status of the person accompanying the child. I do not think Mr. Johnston's scenario of the 20-year-old found accompanying a 15-year-old is all that accurate.

The act gives a peace officer the authority to apprehend a child who is violating curfew, not the person accompanying the child. In Mr. Johnston's scenario, the 20-year-old, who maybe gets a little obstreperous, gets taken in. What for, I ask? If all the people who get obstreperous with police officers were taken in, there would be not enough facilities to accommodate them all. Surely Mr. Johnston knows that a person cannot be taken in by a police officer unless the officer has the power of arrest or apprehension under some federal or provincial statute.

To allay Mr. Johnston's fears that police officers will indiscriminately pick up children, I would point out that the police had far greater powers under the old Child Welfare Act and did not abuse them, so it is difficult to conceive of them abusing the more limited powers conferred by the current and proposed amended provisions of the Child and Family Services Act.

Finally, to turn to the apprehension of runaways, Mr. Johnston's statement, "I defy anybody in this House to explain to me why the existing legislation does not allow a policeman to pick up a young runaway whom he considers to be in need of protection, broadly interpreted, as the minister's own little blue handbook says, when there is no possibility of any civil action being taken against him for doing so," has already been commented on.

Mr. Johnston further states that it is not unusual for a child to run away from abusive parents, and I agree with this wholeheartedly. His concern that runaway children not be returned to abusive parents is one shared by everyone in the child care field. His description of the process by which a parent can obtain a warrant to apprehend a runaway child does not conform to the provisions of the proposed legislation.

The process, as Mr. Johnston described it, will allow for the abusive parent to call the police, sign a warrant and direct the police to go and apprehend a child and take the child back to an abusive home. In reality, the proposed new section 40 permits a justice of the peace to issue a warrant authorizing a peace officer or child protection worker to apprehend a child only if he or she is satisfied on the basis of the sworn information of the parent of the facts alleged in the information.

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The justice of the peace is obviously going to ask questions of the parent, and the parent who deliberately misleads a justice of the peace is liable to a charge of perjury under section 120 of the Criminal Code. The investigating police officer is certainly going to satisfy himself or herself with respect to the domestic situation and, except in the case of a first-time contact, information on the home situation is usually available.

The section also makes provision to take a child apprehended under a warrant obtained by a parent to a place of safety. If there are reasonable or probable grounds that a child is in need of protection and there might be substantial risk if the child were returned to the parent, admittedly the problem discussed earlier with the definition of "substantial risk" again rears its ugly head in this section. Despite the general thrust of Mr. Johnston's remarks, he does raise some valid points, especially concerning the Young Offenders Act.

Mr. Chairman: Thank you. Are there any questions or points?

Mr. Campbell: Inspector, I missed your opening remarks. I take it you are speaking for the Metropolitan Toronto Police.

Mr. Dennis: Correct.

Mr. Campbell: In your knowledge, with other police forces which may not have the sophisticated kinds of services your force offers, how do you feel they would deal with this act generally, as being proposed to be amended?

Mr. Dennis: Again, with the idea of the warrant, they would like it. Most of the kids run to Toronto; 35 per cent of the runaways we have to locate are in Toronto. It makes it easier for everyone if the warrant section is in.

Mr. Campbell: So if the parent swears out a warrant in Ottawa or in Sudbury or Thunder Bay and the child is found in Toronto, do you see that as an easier process, if you are the apprehending police force and conducting that person back to his home community?

Mr. Dennis: What we would do is turn it over to the children's aid. They would transport the child back.

Mr. Campbell: You or the children's aid would be the apprehending officers in that case, and then that transfer would take place at the home police force or the CAS?

Mr. Dennis: The CAS. That is where we turn them over. "Take the child to a place of safety," and that would be the CAS.

Mr. Tatham: With these children you pick up and give to the CAS, do they come back if they are from out of town? Do you have any repeats?

Mr. Dennis: Kids run all the time. Yes, we do.

Mr. Tatham: Same numbers, same names?

Mr. Dennis: Yes. We have had kids run 24 times, constantly run.

Mr. Tatham: From out of town, coming back into Toronto?

Mr. Dennis: From out of town, from in town, from all over.

Mr. Tatham: Do you think these new amendments will help?

Mr. Dennis: Yes, they will. What I am trying to do is break this cycle. I want to see the cycle broken: running to the streets all the time, getting involved in petty crimes. I appreciate the fact that they are kids. If we can apprehend them and get them off the street and the people know that we can apprehend them, it actually does slow it down. If they are from out of town, we do turn them over to children's aid. If there are problems, they can usually discuss it with the CAS. I hope that answers your question.

Mr. Smith: How do you determine what is abuse and what is reprimand? When you listen to the child's point of view, how do you determine that?

Mr. Dennis: If the child complains of abuse, it is thoroughly investigated at that time and a decision is made at the completion of the investigation. We have a child abuse protocol; we have very stringent training methods on it. If we pick up a child and he or she complains of abuse at home, an investigation starts immediately.

Mr. Smith: Can a parent lay a hand on a child? Why I ask is that I had a call just about a week ago from distraught parents, I guess I would have to say, whose daughter is here in Toronto now. Maybe they have even talked with you; they talked to somebody in Toronto.

Does the legislation say what is reprimand and what is abuse? I grew up in a different era, quite frankly. I likely had some bruises from my mother, but it did not hurt me any. Maybe it did at the time, but I do not think it hurt me any. I just wonder if the legislation is clear enough to decide what is reprimand and what is abuse. Is there any comment?

Mr. Culleton: The only thing I can say with respect to that is that it is a judgement call, obviously. Having had five children of my own, along with my wife, of course, who had some part in it, and three grandchildren, I have had a little experience in that line.

I would just like to point out that the provisions of the Criminal Code dealing with the correction of children by force are still there. They have not been successfully challenged under the Charter of Rights as yet. As long as the force is not deemed to be excessive, in light of the circumstances, a parent or schoolteacher who does use force by way of correction, as long as it is not out of line with the act that was done that he or she is trying to correct, the provisions are still there.

There have been many times when parents have been charged and successfully defended it under that act. That is of course a criminal sanction, and I do not know how long it is going to stay, in light of our current climate. It may be that it will be declared unconstitutional down the road but, as far as I know, it is still there.

From the point of view of a parent who is doing it, as opposed to the point of view of a policeman who is investigating it, that law is still on the books. As I say, it is a protection that a parent can fall back on. However, if there is evidence that the correction is more than is needed, if it is done out of anger, frustration or whatever and there is physical harm to the child, obviously we are not going to advise the parents in that sense that they were right in their actions. You have to make a judgement somewhere along the line.

Mr. Smith: Very briefly, what advice would you give to the parents whose 15-year-old daughter is in Toronto? How do they get her back? She was under the custody of the children's aid society when she ran away. How do I advise somebody, from my position, to get her back? She even phoned her parents up and told them she was pushing drugs down here with a 37-year-old man. I do not have the answers.

Mr. Culleton: Nobody does. That is the problem. Nobody has the answers.

Mr. Smith: How do you try to help these people?

Mr. Dennis: That is a problem. We get calls every day. What do you say to a parent? I represent parents. They phone me up. They phone the police—24-hour service—and say, "What can I do?" There is not much they can do right now. This new legislation will make it easier, the fact that they can get a warrant, apply to a justice of the peace under these circumstances and we will apprehend. It does not mean a kid is not going to run again. You cannot force anybody to stay. But what you try to do is possibly get her help with the children's aid or counselling or whatever to take her away from the environment to try to break the street cycle.

If we have that legislation, we can try. It does not mean that two weeks later that 15-year-old girl does not run back to Toronto. Unfortunately, when she hits 16, there is nothing we are going to be able to do anyway.

Mr. Smith: Do you give advice from Toronto to people outside?

Mr. Dennis: Yes, if they call.

Mr. Tatham: "Stay out of Toronto," is that it?

Mr. Dennis: No, no.

Mr. Smith: I am from down around Sarnia.

Mr. Dennis: If they call, we give advice. As I say, there is not too much we can do right now. We do have an officer who liaises with the outside police forces. We have the juvenile task force which concentrates on the downtown core. It spends the majority of its time looking for runaways, dealing with the pimps and dealing with the drug pushers. They have a pretty good idea of what is happening down there.

Mr. Chairman: I have to remind members that we go beyond six o'clock only with difficulty. I have Mrs. LeBourdais, Mr. Allen and then Don Cousens.

Mr. Cousens: I will cancel my questioning.

Mr. Chairman: OK.

Mrs. LeBourdais: I am going to address this to the minister, although the inspector may wish to comment. With regard to a 16-year-old being out between the hours of midnight and six o'clock accompanied by an 18-year-old individual, the circumstance might arise from a parent who has put the child out to work the streets. The adult who is 18 plus is a pimp, and the parent is giving that permission. Would this in any way address that situation? What do the police attempt to do in such a situation to get that child out of the control of the parent? How can you address that in any way?

Hon. Mr. Sweeney: Let me comment, and then I will ask the inspector to elaborate. First of all, the curfew provision deals only with under-16s. If the child is 16, automatically the curfew provision does not prevail. Let's take a situation where the child is under 16 and in the very situation you describe. I do not think there is any legislation, quite frankly, that can deal with that easily. But the "substantial risk" part is still there.

As Inspector Dennis has pointed out, it is not easy to use the "substantial risk" portion. He has given the reasons, and they are still there. So if a police officer, under any circumstances, any time of the day—24 hours a day, not just curfew—sees a child in a situation that he, making a judgement call, senses is a substantial risk, he can always intervene. This does not interfere with that at all. This is an additional provision, but it does not take away anything that was already in the act.

Now, perhaps Inspector Dennis wants to speak from his practical experience.

Mr. Dennis: The legal aspect is—

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Mr. Culleton: Perhaps I can address the member here. Did we understand you correctly in saying that this parent was party to the offence of living off the avails of a prostitute or at least a female under 18?

Mrs. LeBourdais: Definitely.

Mr. Culleton: There is a new offence in the Criminal Code that addresses that particular type of activity with respect to under-18s. It was designed to protect young females in particular from that type of activity. Certainly the pimp in that case would be committing an offence.

Instead of having to take the child away from the pimp, you could do the reverse, plus you could always charge the parents with being accessories if in fact it was being done with their knowledge and consent and even perhaps their approval. There are lots of things you can do.

Mrs. LeBourdais: So there is at least something in effect that will allow you to address that situation.

Mr. Culleton: For sure, under the Criminal Code.

Mrs. LeBourdais: Would it be relatively common in a major city like Toronto?

Mr. Culleton: To have young girls—

Mrs. LeBourdais: A parent who is allowing and knowingly abetting that situation.

Mr. Culleton: Not common, no. Not to my knowledge. It is very rare as a matter of fact.

Mr. Allen: First of all, is it be your normal assumption that a child who is under 16 and on the streets between midnight and 6 a.m. is at risk? Is that your normal assumption?

Mr. Dennis: No.

Mr. Culleton: Not necessarily.

Mr. Allen: What evidence would you require to make that judgement?

Mr. Dennis: For me to apprehend a child between the hours of 12 midnight and six?

Mr. Allen: Yes.

Mr. Dennis: To apprehend him just walking down the street? I would not. I may stop him and say, "What are you doing out?" He says, "I am walking home." I say, "All right, son, can I have your name?" I check him out. He gives me his name. He is not reported missing. He says, "I am delivering papers at five o'clock" or "I am going home from a show." I am going to say, "All right, son, go on home." We do that now. We have always done it.

Mr. Allen: The act presently allows you to apprehend a child who is unaccompanied by a responsible adult. Why is it an improvement under the amendment to specify that this person must be authorized by a parent when we heard in recent testimony here that a child might well be seeking a safe refuge with somebody else?

It may be an aunt or an uncle or some other adult person whom the person feels safer with and who might well not have any authorization—obviously would probably not have an authorization. Why is this language better than the present language in the act that simply refers to a responsible adult?

Mr. Dennis: Because a responsible adult can be anybody. How do you prove that persons are not responsible? By their appearance? By how much money they have on them or by their attitude? You cannot.

This is the way it is now. I know there has been a lot of talk about this, that parents are going to abuse it. An officer gets a report of a child who is missing. Now the child is reported missing and the parent says, "I know that child is at my brother-in-law's place and I do not want him there." The officer attends the location and speaks to the child and to the brother-in-law and makes a decision. If the child does not want to be at home, obviously there is a problem. The child may not tell the officer exactly what the problem is.

But what we would do is play Solomon. We would call the children's aid and say, "We have a problem here." We do that now. We always have. The children's aid becomes involved with the family. It goes from intervention to counselling with the family or whatever. But that child receives some form of independent advice, direction or counselling.

The officer is not going to go up there, I assure you, and drag that kid out of the uncle's or grandparents' home. There are no grounds to. The officer always conducts an investigation. We just do not go down and grab people and drag them out. This is provincial legislation. This is child welfare legislation.

Mr. Allen: So if the child makes a complaint to you in any respect that indicates abuse, he will normally be left in that present situation where he is and you will seek intervention from the children's aid society or another agency in that place, without any return?

Mr. Dennis: Automatically.

Mr. Allen: You did indicate that there was some difficulty with respect to the first case. You said something like: "These are frequently repeat situations and therefore we do get to know families. You have a file and then you can run that and get a sense of what kind of a situation you are dealing with."

You indicated there is a problem on the first encounter with a young person for whom you have no record and who may or may not tell you whether there is a problem at home. What is the protocol when you in fact end up back at home with this child and you seek to uncover any good reason that he might have run?

Mr. Dennis: Again, you bring the child back and you talk to the parent with the attitude—parents have built-in credibility. I believe that the majority of parents are fine people and they are concerned.

Mr. Allen: Well, sure. The majority of kids do not run away from home.

Mr. Dennis: As I say, they still run away from home for other reasons than child abuse and physical abuse. Not all kids run because they are being abused. Some of them want to run down to the street and see how exciting Yonge Street is, and then they find out it is not.

I have been on the force for 24 years. You walk into a place, you look at the family and you can tell. I have had them where the kid comes home and the father started whacking him. I drag him right back out again. I take the kid back out and call children's aid and caution him. I mean, we have had that. You have an idea; you have a feeling. That is all I can say.

I give credit to the majority of our officers. Usually what happens is the child is brought back to the station, the parent is contacted and the officer says: "Mrs. Smith, I have your son or daughter down at 51 Division. What's happening?" The mother says: "I can't come down. I can't leave my young babies. Can you bring her back?" So we transport the kid back. The officer attends, looks at the house, sees the setting, and the kids do talk to the police. They do not come and say, "Yes, I am being sexually abused," but they talk and give an idea, a feel.

It is something that I am not concerned about. I think if a kid runs a second time, we start really trying to watch then. Why are they running? Obviously, there is a problem. Every missing person occurrence for under-16s comes across my desk, and you do see a pattern developing. I have sheets put out by the youth bureau of each division, which are updated. These are all outstanding kids who have gone more than a week. The majority of the 13, 14 or 15-year-old females are downtown Toronto.

Mr. Allen: Do you have a statistical breakdown of the reasons that children run which this committee could look at?

Mr. Dennis: I did not bring it with me, but there was—

Mr. Allen: Has that been provided to the minister?

Mr. Dennis: No, it has not.

Mr. Allen: No?

Mr. Dennis: That was the federally funded research project put on by the office of the Solicitor General of Canada. All those stats are done. I think the report is being prepared and will be supplied shortly.

Mr. Chairman: Inspector Dennis, Staff Sergeant Culleton, thank you very much indeed. We do appreciate it.

Our next presentation is that of Casatta Ltd. of Kitchener. If those concerned would come forward, please, I would be grateful. I will take the opportunity of repeating here, for those of you who are from out of town, that this session will be broadcast tomorrow at 10 a.m. on the legislative channel and these hearings will be run on Friday, with this session at roughly 11:30 on the same channel.

I would be grateful if you would give your names clearly. Perhaps we could begin on the left for the benefit of the record.

CASATTA LTD.

Mr. Adam: My name is Don Adam. I am the staff and program manager of Casatta Ltd.

Ms. Kochendorfer: I am Diane Kochendorfer, the managing director of Casatta Ltd.

Ms. Szymanski: I am Ede Szymanski. I am the program director for Casatta/Warrendale.

Mr. Chairman: Thank you. Please continue.

Ms. Kochendorfer: Let me tell you just a few of the things about what Casatta is. We are a private company that does residential services for adolescents. Some of them are young offenders services, some of them are under the Child and Family Services Act for children in need of protection and some of them are per diem group homes for long-term care of youngsters. So we come with a fairly broad perspective on adolescents and how this act would affect them.

I would like to start by saying that, all in all, I think the amendments are a step in the right direction and there is a lot of good stuff in there, as well as a few problem areas.

In regard to the section on parents issuing warrants, we have talked to many parents who are very frustrated. Their youngsters are on the run. They feel they have no power at all to reach out and do something with the youngster. I think this is a good addition to the legislation, because it does empower parents and I think in today's world parents feel pretty powerless.

1730

The concern that we have there deals with "bringing to a place of safety" and what that place of safety is, because our detention centres are places of safety. That is a pretty big step for a youngster who has not been in the system, ending up in a detention centre as a place of safety on a parent's warrant. We will speak on that just a little more.

The curfew certainly does not solve the problem of children being at risk on the street but, again, it is another tool to be used to apprehend a youngster. We have known youngsters who have been on the streets in the company of someone who cannot be proved to be irresponsible but whom we know is not the right person—a pimp or another over-18-year-old child. I think that is helpful, but it does not solve the problem. Other parts of the act address that problem.

Section 89: I feel this is a very good section, covering the criteria for secure detention. First of all, it takes what I called the second section—that the child has to be unlikely to appear in court or that there is need for protection of the community—and puts it up in the forefront where it belongs. That is the prime reason a child should be in secure detention, not because he or she meets the criteria due to the type of offence that he or she has committed. Also, the fact that escape from custody now is part of the criteria for a child to go to secure detention is very helpful for people working in open-detention centres.

There is a whole section in the act that I am concerned about that has not been addressed. I do not know when it will be proclaimed so that may become a nonissue. I will just touch on it very briefly because maybe it is a nonissue; that is, the intrusive procedures. There are procedures for treatment types of things and procedures for emergency behavioural control and I am concerned that those are distinguished in the act. There are centres that have nonvoluntary clients and there are centres that get to pick and choose what clients they have. As the act is now, if it is not changed, it could be very inoperable in the field.

There was a small change made to the handcuffs section where it says "can be used for secure treatment." I am concerned with the broadness of that whole subject of handcuffing for open custody and feel there needs to be more controls.

Mr. Chairman: Ms. Kochendorfer, this is not directly relevant.

Ms. Kochendorfer: It is just that there was an amendment to that, but it did not touch certain areas of that section.

Hon. Mr. Sweeney: Mr. Chairman, may I make an observation? That same issue came up in the Legislature when we were debating that. I think it was Mr. Johnston who made the observation. We pointed out that there are a number of other amendments, which are in the planning stage right now, which will be brought forward in the fall session. Rather than waiting, because of the summer runaway situation, we wanted to bring these forward right now. Those others that you have concerns with—at least some of them—will be brought forward in the fall. They were not left out.

Ms. Kochendorfer: I was concerned about the absence of them.

Hon. Mr. Sweeney: That is why I wanted to clarify it.

Mr. Chairman: That concern is now on the record and I am sure the ministry will be glad to hear from you on that issue in more detail.

Ms. Kochendorfer: OK. Fine.

Ms. Szymanski: In looking forward to the amendments, I am concerned about one area. I was hoping to see the word "substantial" somehow disappear. Being that I work very closely with the Metropolitan Toronto Police in terms of the street youth that I deal with, I have to rely on them in terms of apprehending the children who end up on the streets of Toronto and are involved in prostitution. Often my call to the police is met with the response that there are only six men who are going to be able to identify these children as being "at substantial risk." Therefore, I believe a lot of children are not being apprehended and end up involved in crime. They are out there a lot longer and end up with their health and welfare in jeopardy as a result of that.

I wanted to raise the concern that if "substantial" is still present, unless the police force is going to change its method of dealing with that—or the courts, in terms of defining it—then we are going to run into the same problem that we have now.

Hon. Mr. Sweeney: I am sure you would not be surprised that we spent a considerable amount of time looking at that one and were strongly tempted to make some changes there. The reason we did not was that these amendments, we think, are going to go part way to dealing with that particular problem. The other one is that there is mixed reception across the province. There are some courts and some municipal police services that are using the term "substantial risk" in the way in which it was intended to be used. That is fine.

There are others where it is the opposite. Since there is not a common element across the whole province, we feel that maybe for that kind of a situation two years is not enough. We would like to give that a little bit more time. But quite frankly, if over the next couple of years it is still evident that kids are going to be at risk because of that wording, we will review it. It was not the case that we did not think of it; it was just a case of have we been at it long enough to give it a try?

On the ones where we are making a change, we are convinced that we have given them enough time. But we still have concerns with "substantial." We do not feel it has had enough time yet. I know where you are coming from, but I want you to know that is on our agenda. It may come forward again, or within another 12 months we may find that everybody sort of gets on board. Only time will tell.

Mr. Adam: I would like to speak briefly to the apprehension of children also, specifically clause 40a(1)(b), for a child in care. A justice of the peace may issue a warrant if the child has been removed from that care and custody of the society and "there are reasonable and probable grounds to believe that there is no course of action available other than bringing the child to a place of safety that would adequately protect the child."

I guess I am concerned that this restriction is placed on the issuing of a warrant, in that no other course of action is available. There are a lot of intermediate steps available that the issuing of a warrant may facilitate, whether it be relatives or some other place of safety without the legal definition that is available to the youth, that may be able to keep the kid safe. I am concerned that there is no other course of action available.

Hon. Mr. Sweeney: One of the changes in these amendments is to prohibit the justice of the peace denying a warrant only because there is another remedy. He cannot simply say, "Look, in my judgement there is another remedy; therefore, I am not going to give the warrant." There may be reasons why he does not give the warrant, but that is not one of them any longer. Staff, am I correct in that interpretation?

Ms. Sheffield: Yes.

Hon. Mr. Sweeney: That is an important change, in our judgement. Once again, like the "substantial," some time down the road we may have to go further, but we anticipated your concern, I believe we have responded to it and at this point in time we are prepared to let it work its way through and see if it is OK.

Ms. Sheffield: I undersatnd you to be referring to the new section 40a.

Mr. Adam: Yes.

Ms. Sheffield: I believe it may be helpful to note that it is a section that addresses only children who are wards of the society. You understood that, I guess.

Mr. Adam: I do.

Mr. Chairman: Mr. Adam, please continue.

Mr. Adam: In subsection 40c(1), the definition of "parent" to be a person "other than an individual" is a curious expression.

Hon. Mr. Sweeney: I asked that myself. I said, "What the blazes does this mean?" They explained it to me and then agreed that we could rephrase it in clearer language.

Mr. Adam: I guess the other overall concern I have—and it may be no different from these amendments than it previously was in Bill 77—is the use of places of safety. Certainly, it is necessary. The kids need to go to a place of safety. I guess a general concern, particularly going back to section 40a, is that reads to me as indicating open detention as a place of safety. I am concerned that again that is a large jump from the family to open detention with basically no crime committed, and I have a philosophical difficulty with that.

I am sure the places of safety are used frequently but it has been subdivided into four categories, so of course it is going to be used four times as often. I just want to make you aware of that concern.

1740

Hon. Mr. Sweeney: I can only share with you what the practical application is as we see it, that in most communities or municipalities a place of safety would not include a place of detention, because there are other more appropriate facilities. There may, however, be a particular community where that is the only place in town. Rather than have them on the street, while we do not want them in a jail cell, for a very short period of time it may be used. Quite frankly, we share your concern and we are reviewing among ourselves whether there is some way we can get around that.

The intent certainly is not that a runaway would be put in detention much like a young offender would be; it would not be in that sense. It would be used only where there just is not anything else available and, if I can repeat myself, we are even trying to find a way around that. I would think the time would come when we would not use a place of detention at all under any circumstances. But for a short period of time, until we have worked our way through that one, we have to have some place for the police to take them.

Mr. Adam: I understand the system problems that are involved here, but I also share concerns about it.

Hon. Mr. Sweeney: I am glad you brought it up.

Mr. Adam: In subsection 89(2), the new secure-detention criteria, it states that if a young person runs from open temporary detention, he or she could be placed in secure temporary detention. Again, it comes down to the legal question: if a youth is placed in a place of safety which is open detention and runs, can he go to secure detention? I know that is not the intent but I am hoping that no one else sees that as a possible interpretation.

Hon. Mr. Sweeney: If we can solve the first problem, we will not have to worry about the second.

Mr. Adam: Right.

Hon. Mr. Sweeney: You make a good point. As I say, we share your concern. We are trying to find a way to get around it in a community where there just does not seem to be an alternative.

Mr. Adam: Right. On the revised subsections 94(1), 94(2) and 94(3), it seems curious that a young person who is in open custody and who runs must be either returned to open custody or placed in secure detention. There is no option of open detention, as I read it.

Hon. Mr. Sweeney: Again, I am going to need some help from my staff. Our sense is that a person who runs from open custody has committed an offence simply by running—

Mr. Adam: I agree.

Hon. Mr. Sweeney: —and therefore you have to put him in a detention situation prior to his appearing before the court. If the reason is that he has run away, then putting him in open detention is not much different from putting him back in open custody; it is still open.

I would think the situation would be very individualistic. The kid may have run away from open custody for some reasonable reason and you bring him back and you say: "Come on now, let's get together. This isn't the way to solve the problem."

Mr. Adam: Or two kids may run away.

Hon. Mr. Sweeney: Yes. But obviously what we are looking at is that if a child simply cannot be detained no matter what you do, other than tying his leg to the bedpost, which we cannot very well do, if you have no other way of containing him and he just continues to run, then we want to be able to offer something to those people. This has come to us from the people who are operating open detention and open custody. They are saying: "Look, this is

crazy. You say we cannot lock the door, yet we are responsible for this kid. If they run away, it is our fault, yet you give us no alternative when in fact they do that."

The legislation was put in there so that those people who are operating open custody and open detention are not put into a literally impossible situation. We just felt it was not fair to put them in that kind of situation. Where you obviously cannot contain this child, you have tried everything you can think of and it does not work and he still runs, then secure detention while you are waiting for a court hearing is the alternative.

Mr. Adam: We certainly want to break the cycle, and the option of secure detention is an excellent option to protect the youth.

Hon. Mr. Sweeney: That is all it is there for.

Mr. Adam: The option of open detention does not appear to be there.

Mr. Allen: On a point of order, Mr. Chairman: It has shifted from becoming the presentation of a brief to a dialogue between the minister and the witness. While it has been very interesting, it is also not the point of a committee presentation.

Mr. Chairman: I was coming to the same point. This is a valuable resource, and in actual fact a number of very interesting points arose from your discussion, but the minister is a resource of our committee, so if you would continue.

Mr. Adam: That was the point I wished to make.

Mr. Chairman: Thank you. Are there any questions or points from members of the committee?

Mr. Allen: Would you tell me a little bit about Casatta, please?

Ms. Kochendorfer: Is there anything specific you would like to know?

Mr. Allen: I do not have the faintest idea who you are. Maybe I missed something along the way, but I would just like to know where you come from, what you do, how long you have been there, some of those things, so I know who I am hearing from.

Ms. Kochendorfer: We have been operating for 12 years. As I said, we do residential services for adolescents. We are a private company and we operate under contract with the ministry or under per diem group homes. We have seven different places we currently operate.

Mr. Allen: Across Ontario?

Ms. Kochendorfer: From Kitchener, Milton, Peel, Toronto, Brantford, and the whole Kitchener area of Guelph and Cambridge, that general area.

Mr. Allen: How important with respect to secure detention is numbers of staff?

Ms. Kochendorfer: Pardon me?

Mr. Allen: I understand that one can define "secure detention" both

in terms of a locked, closed facility or in terms of ratio of clients to staff, if I can put it that way. I was simply asking you: How significant do you find the latter and how useful? Then the subsequent question is: What is your staff-client ratio, and is that adequate to use numbers of staff as a secure-detention device?

Ms. Kochendorfer: First, we run open settings. I think that is where the staff ratio becomes important, particularly with young offenders. We have a custody home which has nine children; we have eight staff plus a director there. We have a detention facility which houses eight children; we have nine staff plus a director there, with two or three on at any given time in that centre. We have a centre in Milton which has 14 young people, and I believe we have a total of 14 staff there—12 staff, a director and an assistant director—so that generally, except overnight, we have four staff on.

There is a lot of court work to be done, as well, within the young offender system, particularly the detention systems. I will use this as a platform, as you asked the question. Our problem is not so much numbers but salaries the staff are given, in being able to attract and keep good staff. The important thing is their abilities, not numbers, although that is important. Their skills are very important.

Mr. Chairman: Mr. Adam, Ms. Kochendorfer, Miss Szymanski, thank you very much indeed. It was good of you to come.

Our next presentation is the Whitby Psychiatric Hospital, Dr. Lazor. Again, I would be grateful if, when you are ready, you would clearly state your name and affiliation, please.

WHITBY PSYCHIATRIC HOSPITAL

Dr. Lazor: My name is Dr. Lazor and I am the director of adolescent services at the Whitby Psychiatric Hospital.

One of the three programs run at Whitby Psychiatric Hospital which belong to adolescent services is a short-term crisis-intervention secure unit. We have operated it for 13 years now and I have been involved in this program from the beginning. I am talking not only on behalf of myself as a clinician who deals with this population, but I also consulted the people from the unit and I got information and some input from them which I would like to share with you today.

First, I would like to thank you for the opportunity to talk to you, because this is the area which is of much interest to me. As you can see, I have stayed in this business now for 13 years.

I would like to really applaud you for the amendments which are proposed at this time. I was quite concerned about the first draft because I felt the clinical input was not quite to the degree I would have liked to see. I am really applauding you for the combination of the clinical input into this legislation, which is very difficult for this type of population.

The area which we are very pleased about, and I am very pleased about, is the area of the criteria for admission for the short-term crisis or emergency admission. This will also be the area which I will focus on because this is what I am most familiar with.

In regard to the emergency admission to secure treatment, I am really pleased to see that the time is extended to 30 days. In our setting, the average length of stay is about 19 days. We welcome those 30 days because this legislation will help us to place the kids outside the unit when they are stabilized and there is not a setting for them. Therefore, the ministry will have to look at the services where the kids should go, which means we really must welcome this time limit which is given there.

The other part with which I am quite happy is the area on the criteria for admission when one is talking also about the verbal threats to harm himself or others. Our experience with our population is that many of the children who had committed a self-destructive or dangerous act in the past repeatedly do verbally threaten the others, and they actually end it by repeating the same act. Therefore, rather than us waiting until somebody kills himself or herself or hurts other people, we can prevent that part.

I also was looking into the substitution of subsection 118(6), which is about the requirement for written notice. I would like to have some answers to a few questions that I am not really sure about. A 24-hour notice has to be given to the advocacy office as well as to the official guardian after the child is admitted to the secure treatment on an emergency basis. Is it during the working days, or what are you planning to do about Saturdays, Sundays and holidays? Many of the admissions on an emergency basis occur on Saturdays, Sundays and holidays. I was really not clear if there is any plan, if I am interpreting this section correctly.

The mandatory advice is not unknown to me because at the present time we are operating under the Mental Health Act. Therefore, each child who is admitted to our crisis unit has a patients' rights adviser, after the child is admitted to us. I think a child has a right, and should have a right, to get the advice.

I do have some concern which I would somehow like to share with you that some provision will be made in this section to ensure that there will be a periodic review of this part of the amendment or the legislation. There is a trend, which we saw during the past year, but it involves a small number of the kids. Therefore, I do not want to make the assumption that this will occur in the large sample, but we should pay attention to it. During the past 12 months, we have had 12 applications for review board under the Mental Health Act. Eight of them were under the ages of 16, and they were requests for review of the placement. Fourteen were over age 16, and two of them were about review of the placement. Only two appealed about the form which they had been on.

The area we are particularly concerned about is the area of the youngster under the age of 12. We have some pattern, but it is a small number. Again, I do not want to make the assumption, but it is a trend I would like to make this committee aware about. Of all children under the age of 12, what we really felt was that during the process the children who were in the process to go for the hearing were concentrating on the legal issue and we could not engage them in the therapeutic issue. We could not do the problem-solving with them. After the hearing was over, and all hearings confirmed that the child should stay in the placement, we actually had a more co-operative child. But before the hearing took place, we were not able to engage them in the treatment of the problem-solving.

What resulted, and I do believe there are several factors, was that all those children who appealed for the review board stay longer than average stay

of other children. We do believe that maybe that it could be because we engaged them only later on and we could not work with them at the beginning. All stayed 30 days or more until they were ready to leave the unit. Therefore, I would like to inform you that maybe we can look at and review this part, whether you will get the same result from the other places. Maybe it is a coincidence, but it is interesting that it is the same trend.

All children under the age of 12 came in a cluster or epidemic to apply for the review board. We did not have one child under the age of 16 who applied just alone. We always had two or three children. We felt that some of them really did not know. All of them have difficulty with their impulses. It means that indirectly we encourage them to make the impulsive decision, but 50 per cent of them withdrew the application before the hearing took place.

We were looking also at the lobbying, how much time is spent on the preparation for the hearing, because we feel, and I feel, it is very important, if the amendment takes place and we are to go through this court hearing, that those agencies that are dealing with the secure treatment, short term or long term, have to be funded somehow if indeed there is a need for more time in preparation and appearance in those hearings.

During the last 12 months, it took about 15 hours of work per hearing for the psychiatrist, co-ordinator, primary worker and clinical clerk. Again, with 12 kids it is not too much, but what I am saying is, if there are more appeals, then the ministry should take this into consideration and add a budgetary increase or money so that this can take place.

Taking the children outside the unit is not included. Our experience at the beginning was that we were asking the review board whether the hearing could take place in the unit. They did not feel comfortable. They said to bring the kids to the main office, which is on the same grounds. But after three hearings, when the kids were destroying things and they had to be held and they were really upset, they started to come into the unit, and it has worked much better. We can really give more support to the child. Therefore, my recommendation again will be that if this legislation passes, that it be arranged that those hearings take place on the property of the secure treatment unit.

Mr. Chairman: Dr. Lazor, may I ask you just to pause for a moment? I need unanimous consent to continue for a short time beyond six o'clock. Do I have it? Yes.

Dr. Lazor: OK, I will be short.

Mr. Chairman: No, please continue. It was a technicality.

Dr. Lazor: The other part which is very nice about the mandatory advice is that there is something specified that the advice to the child should be in language suitable to the child's level of understanding. My question to the ministry will be, "What are you doing about the people who do it?" The people have to learn about development of the child, cognitive functioning of the child and basic understanding of psychopathology. My recommendation will be to do the training, but just basic training, about this issue for the people who will deal with those youngsters.

That is all I have about the short-term or emergency admission.

I am concerned about two issues which are not included as changes in

this act. One is that I still do not understand why the physician cannot apply for short-term and emergency admission for children under the age of 16. My clinical experience is that if the child is in distress and in acute crisis, and many times the family is in distress, how will we proceed with those kids if they clinically need to be admitted to the secure unit?

The other part is about psychotropic drugs. I am not concerned about the emergency procedural thing and the consent; I am for it. The only issue will be who is really talking to whom. I expect it will be the physician who will talk to parents or guardians or the child. It is not specified, but I assume that.

1800

My only concern is about the psychotropic drugs, about the youngsters who do suffer from delusional illness, which is false belief. It is the thought disorder which relates to their homicidal or suicidal ideation. If we do not obtain the consent for those children, as this is the main morality of the treatment, what does the legislation plan to do with those children who cannot be treated without the medication? What I feel is that we will not do justice for them, because we will refuse the treatment for somebody who needs it and he will end up in a secure environment only as a detention and there will be no treatment for him.

Also, I am not really sure what will happen, who will do the follow-up and who will be responsible for those youngsters. They cannot be held in secure treatment because they are still homicidal or suicidal because of their thought disorder. This is the only part I am concerned about—psychotropic medication. I think that is all. Thank you for listening.

Mr. Chairman: Thank you, Dr. Lazor. Are there any questions or points?

Hon. Mr. Sweeney: Can I answer some questions?

Mr. Chairman: Could I ask one? Dr. Lazor, I did not understand the part where you were talking about clusters of children applying under the age of 12.

Dr. Lazor: No, sorry, it was under the age of 16.

Mr. Chairman: What did you mean by that?

Dr. Lazor: I meant that those children under the age of 16 never apply singly. They always apply, as we call it, epidemically, with the group. Three children will come together and apply.

Mr. Chairman: Do you mean they were a group before they came or they simply came in waves?

Dr. Lazor: No; they grouped.

Mr. Chairman: They knew each other.

Dr. Lazor: Yes.

Mr. Chairman: I see.

Hon. Mr. Sweeney: Your question on the 24 hours applies to seven days a week at any time. As an administrator, your responsibility is to advise within 24 hours. Our responsibility, as a ministry, is to provide the process whereby you can do that. In other words, we are not going to put you in a situation where there is no one to call. We will ensure that you have a phone number you can get to. That is our problem and we have to solve that ourselves. We have not yet solved it, but we will.

Dr. Lazor: Thank you.

Hon. Mr. Sweeney: With respect to the review, the reason it was not made mandatory was the very reason you had indicated, that the children can get so caught up in the review process that the treatment process simply does not work until the review is finished. What we are saying is we believe we had to have a review process simply as a matter of right. On the other hand, we did not want to make it mandatory. So whoever is involved in making the decision can simply say, "Look, obviously review is necessary here," or can make the decision, "Obviously, review is not necessary here; let us get on with the treatment." That is sort of the middle ground, if you will.

With respect to the review board being in the unit rather than someplace else, I cannot answer that for sure, but I do not see any reason why not. We would be quite prepared to consider that; you have given some good reasons for it. We would want to be sure that did not impose undue pressure on the child, but we are willing to work that out with you.

When we talk about language, we just simply mean if you are talking to the child, be sure he knows what you are talking about. In other words, we do not want somebody using undue legalistic language or undue medical language so that the child says, "What are you talking about?" It has to be in a way that the child fully understands what the issue is, what is being told to him or her. That is what we mean by in appropriate language, and that is a judgement call, obviously.

With respect to no physician under 16, that was a sawoff, quite frankly. The physician has an opportunity beyond 16, but our sense was that a parent or a guardian is legally responsible for that child up to the age of 16 and is the one who should make the decision, not the physician. That is open to question. As I say, it was a sawoff. We tossed it back and forth.

On the approval for drugs, I cannot answer that. Can somebody? We will have to find out for you. I do not know what the answer to that question is. It is a good question.

Dr. Lazor: Thank you.

Mr. Allen: Did you say that requests for review tend to come in bunches from within the group of persons being detained? I did not quite get you.

Mr. Campbell: Epidemically. One child goes and then there is peer pressure.

Dr. Lazor: For those kids who are under the age of 16. We did not have it with the children 16 and over; they apply singly. At one point, it was one child aged 16. We have other 16 year-olds there. But when we have children under 16 and they apply, they never apply singly. There always have been two or three, epidemically, as we call it. They influence each other and they also

have this characteristic that they withdraw much more than those 16 and over.

Mr. Allen: Do you think that after a child, a youngster, has been in secure detention for three or four months, it still ought to be left to the child to instigate the interview?

Dr. Lazor: I did not address this issue to a long-term treatment; I addressed this issue to only a short-term, emergency admission.

Mr. Allen: I see. You do not have any opinion on the other?

Dr. Lazor: No.

Mr. Chairman: Dr. Lazor, again, thank you very much indeed. We do appreciate your being here.

Is there any other business? There being no further business, we will adjourn until after routine proceedings tomorrow in this room where we will continue hearings on Bill 107.

The committee adjourned at 6:06 p.m.

Parkdale
Community Legal Services Inc.

JUN 6 1988

Am

1239 Queen Street West
Toronto, Ontario, M6K 1L5
Telephone 531-2411

June 6th, 1988

Justice for Children
105 - 720 Spadina Avenue
Toronto, Ontario
M5S 2T9

Attention: Ms. Marie A. Irvine
Executive Director

Dear Clinic Colleagues:

RE: Bill 107 - An Act to Amend the Child and Family Services Act

Thank you for providing us with a copy of your response to Bill 107. We are in total agreement that the Bill deals with issues of fundamental importance to children and should not be passed without full debate.

As you know, Parkdale Community Legal Services made both written and oral submissions during the legislative reform process leading to the Child and Family Services Act. The proceedings before the Standing Committee on Social Development were crucial to the final form of the legislation. Many difficult issues were debated and decided at the Committee level. Bill 107 re-opens many of those same issues. It is our strong position that legislation arrived at after careful and lengthy deliberations should not be amended without a similar opportunity for further debate.

During the process leading to the proclamation of the Child and Family Services Act, Parkdale Community Legal Services took positions on both the criteria for intervention and the treatment provisions described as "extraordinary measures". If time is made available, as we believe it should be, we would be interested in making submissions on Bill 107. We believe that your response raises substantial issues which should be fully debated.

You should feel free to make our position known in any submissions which you make to the Committee.

Yours very truly,

PARKDALE COMMUNITY LEGAL SERVICES INC.

GM/Green

GERALD GREEN
Clinic Director
GG:jw

by & Edwardh
barristers

JUN 6 1988

Prince Arthur Avenue
Toronto, Ontario
M5R 1B2
Telephone (416) 964-9664

June 3, 1988

Am

Justice for Children
720 Spadina Avenue
Suite 105
Toronto, Ontario
M5S 2T9

Attention: Marie A. Irvine
Executive Director

Dear Ms. Irvine:

I am writing to you to indicate my support for your response to an Act to amend the Child and Family Services Act, May 1988.

The proposals raise serious concerns and I would suggest that the Government take more time to consider their implications.

Yours very truly,



Clayton C. Ruby

/ms

1615

with
(B)

RESPONSE TO AN ACT

TO AMEND THE CHILD AND FAMILY SERVICES ACT, 1984 (BILL 107)

MAY 1988

also report from
article 7
1988

JUSTICE FOR CHILDREN

105-720 Spadina Avenue
Toronto, Ontario
M5S 2T9

RESPONSE TO AN ACT

TO AMEND THE CHILD AND FAMILY SERVICES ACT, 1984 (BILL 107)

I. INTRODUCTION

We have in the past raised serious concerns with the Ministry of Community and Social Services with respect to potential amendments to the Child and Family Services Act (see our Response to the Professional Advisory Steering Committee Review of Part VI (Extraordinary Measures) of the Child and Family Services Act (November 1986), and our letter to the Minister of February 16, 1987 with respect to amendments proposed to the Act at that time). We regret that many of our concerns remain unaddressed by the Ministry, and that the amendments proposed in Bill 107, in our view, represent a major shift in policy by the Ministry and undermine the protections that were given to children and youth by the Act. We trust that, after appropriate consultation and full public hearings on the issues raised, any amendments proposed by the Ministry will support the important principles set out in the Act.

We set out below specific concerns and recommendations with respect to the following issues:

1. Warrants for the apprehension of children based on the sworn information of a parent.
2. Warrants for the apprehension of children (specifying premises where the child is located).
3. Protection from personal liability of peace officers or child protection workers.
4. Secure detention.
5. Secure treatment.
6. Psychotropic drugs.
7. Disclosure of Records.

II. RESPONSE TO SPECIFIC PROPOSALS

1. Warrants for the Apprehension of Children Based on the Sworn Information of a Parent (section 40c) (the "runaway" amendment)

We oppose the inclusion of this section in the Act for the following reasons:

- a. This provision represents a major shift in Ministry policy. There is no requirement that the child be in need of protection, at risk or in any way endangered. There is no requirement that the child be a "runaway", as opposed to simply not being at home. There is no requirement that the child be below the age of 16 years. Parents are given an absolute right to control the liberty of their children and are invited to use the state to enforce this right. Clearly, the section invites challenge under the Charter of Rights, specifically section 7 (the requirement that apprehensions be in accordance with fundamental justice), section 9 (the requirement that apprehensions not be arbitrary), and section 15 (the guarantee of equal benefit and equal protection of the law).
- b. The provision is superfluous. The group of children at which this amendment is aimed are not necessarily at risk or out past midnight. Ample power now exists for the police and the children's aid society to apprehend any child under the age of 16 years who they reasonably believe to be at substantial risk. The curfew provisions allow apprehension between the hours of 12:00 p.m. and 6:00 a.m., whether or not the child is perceived to be at substantial risk.
- c. Based on our experience, it is probable that the proposed amendment will lead to abuse by the authorities. Too many children who are not at risk will be thrown into a confrontational situation when the police attempt to apprehend them. However well intentioned they are, at times the police in the past have been known to be unnecessarily forceful during such apprehensions. This office successfully argued one such case. Ironically, the case was argued in the context of assault charges that had been laid against our client, the "runaway."

- d. In our experience, when a young person runs from home, there are generally problems in the home. This section does nothing to solve these problems. Apprehension under this section may result in young people being returned to abusive environments. It should be noted that young people will not always admit to police that their home environment is abusive.

In our experience as well, young people who have run from home are often living in environments that are safer than their parent's home. The provision affords these youths no opportunity to have input into the decision as to where they are to live.

- e. The provision invites parents to use the police to enforce custody orders against aunts, grandparents, and other family members. For example, the amendments would allow a parent to request the issuance of a warrant to apprehend a child who went to stay with another family member after a fight with the parent. Subsection (6) does not address such situations.

The rationale for the focus on the consent of a parent in the situation where a child has withdrawn from the care and control of the other parent is unclear to us as well. Clearly, warrants should not be issued in circumstances where the child is residing at the home of a parent with access.

In all these circumstances, proceedings are more appropriate if taken pursuant to the Children's Law Reform Act. Otherwise, quite simply, what is being legislated is custodial rights.

We recommend that section 40c not be included in the Act.

If, in spite of our strong recommendations to the contrary, section 40c is to be included in the Act, we make the following recommendations with respect to its present form:

- a. The meaning of "parent" must be clarified. By subsection (1), "parent" is defined to include a person, other than an individual, that has custody of the child. This is presumably not intended to cover wards of a children's aid society, who are mentioned specifically in section 40a. The purpose and intent with respect to this subsection are unclear to us.
- b. The section must specify that it applies to children under the age of 16 years. We refer you to subsections 40a(1) and (4), which clearly limit the power to apprehend a child who has left or been removed from a children's aid society's lawful care and custody without its consent to children under 16.

- c. Subsection (8) should specifically address the situation of the mature young person who does not wish to be returned home because of reasons of independence. The young person should have a right to present a judge with a reasonable plan for his or her own care and safety. In such circumstances, the legislation should provide the court with the power to make an order which includes a plan for independent living for the young person.
- d. The section should require that all warrants to apprehend a child be made by a judge and be based on the judge's objective assessment of risk. The present intent appears to be that a warrant may be issued by a Justice of the Peace, and may be based on a parent's reasonable belief that the child's health or safety may be at risk if the child is not apprehended, whether or not the Justice of the Peace is satisfied that the parents' grounds are reasonable and probable.

The section invites parents to use police intervention in situations where a young person is simply defying his or her parent's authority or is late returning home. Clearly before issuing a warrant which will involve apprehension of a child by the state, the decision maker should be satisfied that the grounds to believe the child is at risk are reasonable and probable.

Parents should be required to show reasons why they should be allowed to proceed ex-parte. Acceptable grounds might include a belief that the child is in the company of a pimp. However, where, for example, the child is staying with an aunt or a grandparent, the parent should be required to serve the person in whose home the child is staying with notice of the application.

As the determination of such issues involves an assessment of complex family situations and a potential infringement of a child's liberty by apprehension by the state, these decisions should be made by a judge.

2. Warrants for the Apprehension of Children (specifying premises where the child is located) (subsections 40(4), 40a(3), 40c(7))

These provisions provide that warrants for the apprehension of children need not specify the premises where the child is located. We are opposed to the application of these subsections to a warrant to apprehend a child from residential premises.

We appreciate the need, in particular cases, for a warrant to be issued that does not specify the premises where a child is located. This could occur, for example, where a child is at risk on the street. Clearly a warrant would be useless if it specified, "the corner of Queen and Bay Streets," when ten minutes later the child may be at the corner of Queen and Dundas Streets.

In our experience, however, young people are often in a safe place, for example, with a grandparent or an aunt. The issuance of a warrant in such circumstances without specifying the premises would be a breach of the rights of both the young person and the person in whose home the young person is located. We recommend that, where a warrant is issued for the apprehension of a child from a public place, it include the statement, "This warrant does not authorize the apprehension of [the child] from any residential premises."

We recommend as well that "residential premises" be defined to specifically include hostels and shelters. Young people view these facilities as safe places to run. They should not be discouraged from using them.

We recommend that any warrant issued to apprehend a young person from residential premises must specify the premises where the child is located.

3. Protection from Personal Liability of Peace Officers or Child Protection Workers (subsections 40(13), 40d(7)).

Peace officers and child protection workers are protected from liability by the present subsection 40(16). The amendments would strengthen this protection, in part by removing the reference to an "act... done maliciously or without reasonable grounds."

We are opposed to the breadth of these provisions. They invite intervention in family situations by police officers or child protection workers where the evidence is not sufficient to justify such intervention.

We recommend that the wording of the present subsection 40(16) be retained, by which protection does not extend to acts done maliciously or without reasonable grounds.

4. Secure Detention

We are opposed to the broadening of subsection 89(2) in the manner proposed. It would allow a young person who simply ran from an open custody facility to be placed in secure detention. Young people who simply run, but do not commit an act that is dangerous to the public or results in serious property damage, should be returned to open custody.

A young person is placed in open custody where he or she does not fit the criteria for secure custody. These criteria relate to the seriousness of the offence with which the young person is charged. This provision, in allowing young people to be placed in secure detention in circumstances where they have not committed a serious offence and are not a danger to the public, undermines the basic principle that young persons will be placed in secure custody only when their conduct is so serious that this infringement of liberty is warranted.

We recommend that clause 2 of subsection 89(2) not be included in the Act.

5. Secure Treatment

We are opposed to the proposed amendments for the following reasons:

a. Grounds for Emergency Admission

The proposed clause 118(2)(b) expands the criteria for admission to a secure treatment facility to include a young person who has "made a substantial threat to cause serious bodily harm to himself, herself or another person." The present wording requires that a young person must have "caused or attempted to cause" such harm. By the proposals, a threat would be enough to justify the commitment of a young person to a locked facility.

The reference to "conduct" is presumably something other than "attempted to cause... serious bodily harm". It is a broad and vague subjective criterion, implying an interpretation and conclusion about a pattern of conduct that does not amount to an attempt to cause bodily harm.

By removing the requirement that the act be committed during the seven days immediately preceeding the day of the application, the Ministry would allow for the admission of a child to secure treatment facility on the basis of a threat made, for example, a year prior to the application. Clearly, a threat made a year ago is no longer evidence that a young person is of imminent danger to him or herself or to others. This proposal is unacceptable to us and, in our view, undermines a young person's Charter protected liberty interest.

We recommend that clause 118(2)(b) be retained in its present form.

- b. Consent of young persons to an extension of committal after attaining the age of 18 years.

We are opposed to the proposed clause 116(1a)(c), whereby a physician, with the written consent of the administrator of a facility, could apply for a order extending the person's commitment to a secure treatment program beyond the person's 18th birthday, without the consent of the person.

The consent of the 18 year old adult would have to be given to an application by his or her parent or the administrator. We see no rationale for denying a person the basic right to consent to his or her continued treatment in a locked facility based on the identity of the person who is applying.

We recommend that the consent of the person be required with respect to an application by a physician to extend the person's commitment to a secure treatment facility beyond the person's 18th birthday.

- c. Forum.

By the proposed subsections 118(6)-(13), the Ministry would oust the court's jurisdiction and vest the power of review of a young person's committal to a secure treatment facility in the Children's Services Review Board. We are opposed to this proposal, as the proper forum to determine whether or not a young person should be deprived of his or her liberty and be placed in a locked facility is the court.

We recommend that the powers of review of a young person's committal to a secure treatment facility remain vested in the court.

- d. Automatic Review

The proposed subsection 118(9), would require that a young person request a review of his or her committal to a secure treatment facility. We are opposed to this proposal, as it places the onus on the child to apply for a review.

Generally, the law does not deprive a person of his or her liberty and then place the onus on him or her to apply for a review. Surely, a vulnerable child should not be expected to apply for a review at a time of high stress.

We recommend that reviews of deprivation of liberty be subject to automatic review and be mandatory, subject to the child's right, after receiving legal advice, to waive the hearing.

e. Child's Right to Legal Representation.

We are opposed to the proposed subsection 118(8), by which the Official Guardian would represent young persons unless that Office was satisfied that another person would provide legal representation for the child within the time frames specified. The clear implication of this provision is that the child does not have freedom of choice with respect to his or her legal representation.

We point out as well a potential Charter of Rights challenge. The provision would provide that a child has no right to counsel until 5 days have passed. Section 10 of the Charter provides a person who is detained with the right to retain and instruct counsel without delay.

We recommend that the proposed subsection 118(8) not be included in the Act.

6. Psychotropic Drugs

We are opposed to the proposed amendment to clause 126(2)(c) whereby the consent of a young person to the administration of a psychotropic drug would include a specification of the risks and possible side effects associated with the drug, rather than any risks and possible side effects. The administration of a psychotropic drug is an extremely intrusive procedure and, in our opinion, a young person and/or his or her parents has the right to be informed of any risks or possible side effects. The amendment as proposed prefers medical convenience to ensuring that a young person's consent be truly informed.

We recommend that clause 126(2)(c) be retained in its present form.

7. Disclosure of Records

We are opposed to the addition of section 166a to the Act for the following reasons:

- a. The provision is unnecessary, as the present section 166 adequately addresses the issue of disclosure of records.
- b. We are astounded by the breadth of the definition of "record of a mental disorder." Presumably, it includes any person who makes any record concerning a person's mental disorder. The amendment results in the absurd situation that anything written by anyone in the world about a person's "substantial disorder of emotional processes, thought or cognition" becomes a medical record. We raise, for example, the implications of a children's aid society claiming that its record is a clinical record.

- c. Subsection 166a(3) requires that an application for disclosure be made to the Divisional Court. This would presumably apply to a review of emergency secure treatment, rendering such review meaningless because of the inability to obtain relevant records in a timely fashion.

By this provision, the Ministry would provide greater protection to the records of a mental health professional than to a young person's right to be free. Under its proposals, the Ministry would not provide an automatic review to children committed to a secure treatment facility, even to an administrative body. Yet it would allow a mental health professional to refuse to release records concerning the person to the young person's lawyer, unless the latter brought an application in the Divisional Court.

As time is of the essence in matters involving deprivations of a young person's liberty, the body charged with hearing an emergency application concerning a child's commitment to secure treatment should also be charged with making the decision concerning disclosure of records.

We recommend that the proposed section 166a not be included in the Act.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILD AND FAMILY SERVICES AMENDMENT ACT

TUESDAY, JUNE 7, 1988

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)
VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)
Allen, Richard (Hamilton West NDP)
Campbell, Sterling (Sudbury L)
Cousens, W. Donald (Markham PC)
Jackson, Cameron (Burlington South PC)
Johnston, Richard F. (Scarborough West NDP)
McClelland, Carman (Brampton North L)
McGuinty, Dalton J. (Ottawa South L)
O'Neill, Yvonne (Ottawa-Rideau L)
Tatham, Charlie (Oxford L)

Substitutions:

Cunningham, Dianne E. (London North PC) for Mr. Jackson
Matrundola, Gino (Willowdale L) for Mr. McGuinty

Clerk: Carrozza, Franco

Witnesses:

From the Association of Parent Support Groups in Ontario Inc.:
Kelman, Marla, President

From the Ministry of Community and Social Services:
Sweeney, Hon. John, Minister of Community and Social Services
(Kitchener-Wilmot L)

From the Ontario Association of Children's Mental Health Centres:
Rothery, W. Michael, Past President and Treasurer
Weinstock, Sheila, Executive Director
Eakin, Lynn, Member, Legislation Committee

From the Ontario Association of Children's Aid Societies:
Huether, John, Local Director, Children's Aid Society of the Region of Peel
Genereux, Anne, Manager of Accreditation and Legal Support
Caldwell, George, Executive Director
Ringrose, Peter, Local Director, Family and Children's Services of the
Waterloo Region

Individual Presentation:

Martin, Fay, Social Worker, Pape Adolescent Resource Centre

From Youthdale Treatment Centres Ltd.:
Kennedy, Dr. Brian, Director, Youthdale Crisis Unit

From the Heritage of Children:
Lusher, Sylvia, Founder
Silver, Abraham, Founder

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, June 7, 1988

The committee met at 3:46 p.m. in room 151.

CHILD AND FAMILY SERVICES AMENDMENT ACT
(continued)

Consideration of Bill 107, An Act to amend the Child and Family Services Act, 1984.

Mr. Chairman: I would mention for those who are here in the audience that these sessions will appear on the legislative channel on Friday, beginning I believe at approximately 11:30 a.m. I would also like to mention for those who are making presentations that we would appreciate it if you would be as brief as possible and leave time for questions from the committee.

I welcome again John Sweeney, the minister responsible for this bill. The minister is here as a resource person and as a guest of the committee.

Our first presentation is that of the Association of Parent Support Groups in Ontario. If Ms. Kelman would come forward we would be grateful. Ms. Kelman, when you are settled, if you would give your name and affiliation clearly into the microphone for the benefit of Hansard and the translators.

ASSOCIATION OF PARENT SUPPORT GROUPS IN ONTARIO INC.

Ms. Kelman: I am Marla Kelman and I am the president of the Association of Parent Support Groups in Ontario.

Mr. Chairman: It is my understanding you do not have a written presentation.

Ms. Kelman: No.

Mr. Chairman: That is fine. Please continue.

Ms. Kelman: Briefly I would like to describe for one moment the Association of Parent Support Groups in Ontario for the committee. It is an incorporated, registered, charitable, nonprofit organization which serves self-help groups for parents throughout the province who are in crisis because of their children's negative behaviour.

The children range in age from roughly 10 to 30 years. Our parents represent the statistics that the Child and Family Services Act has been working with. It represents also children who are runners. I think the committee is well familiar with the statistics on that, as well as juvenile prostitutes, as well as drug addicts or alcoholic children.

Our kids are involved with drugs, alcohol, truancy, theft and verbal and physical abuse of their parents. Often they are in serious trouble with the law. The vast majority of these youths are not street kids who are running from abusive environments. If they run they are likely to be running to some place with no rules or restrictions, such as school, work, use of alcohol or drugs.

The association or the provincial umbrella group works with all existing agencies serving families, including those known to advocate primarily or exclusively on behalf of children. We are responsible for assisting, supporting and educating parents and naturally are concerned about legislation which affects the parents' ability to parent their children effectively.

We have been concerned in the past with the Child and Family Services Act and have documented these concerns with the minister with specific examples on a variety of occasions. We are very pleased with the amendments. I would suggest that our primary concern rests with the implementation of the amendments.

Regarding section 40c, which pertains to police and children who have run, the amendment pertaining to the police or a child protection worker's ability to apprehend a runaway assists us, as parents, to a degree. We have faced tragic situations in the past due to police inability to act. However, there are two serious problems we will encounter with this amendment.

First, in my experience, no parent is aware that now they will have to swear a warrant before a justice of the peace—and I recognize this is a proposed amendment. The average parent only knows to call the police or to call the societies. Our concern with that amendment is: Who will inform the parent who is in crisis and a highly emotional state what they must then do in order to get the co-operation of the police force?

My second question: Throughout Ontario, not just within Metropolitan Toronto, are there justices of the peace available at 2 a.m., 4 a.m., 6 a.m. for these parents to go to in order to swear a warrant? As the Young Offenders Act has defined a youth as someone under the age of 18 with "special needs requiring guidance and assistance," clause 3(1)(c), how does a parent remain "responsible" for their child when, at 15 or 16, they have the vast majority of freedoms an adult has? How does a parent deal with a 16-year-old runaway who is out of control and at risk?

I realize that the Child and Family Services Act does not deal with those older than 16 years. I realize that we are all very concerned about the grey area between 16 years of age and 18 years of age. I see now, because of societies being overtaxed, that we are not talking about under 16; the reality is that if you call with a 15-year-old, it means they are almost 16.

In respect to the curfew issue, we are very pleased that this amendment will give the police the opportunity to return a child who is not in the company of a person who has been approved by the parents. That is a tremendous assistance to us. Two of the problems may be that this will mean that all officers, I presume, will have to contact the parents to clarify whether the parents have approved of the company the child is keeping. Second, this assumes, of course, that the youth will tell the officers the truth, which might be unlikely if they are out without their parents' permission, let alone approval. Third, will this only pertain to youths whose parents have reported them missing, as opposed to any child out between 12 and 6 a.m. appearing to meet the criteria of this section?

Regarding subsection 89(2), pertaining to the child currently in open custody who runs, we are very pleased again with this amendment to move a child from open custody or open detention to secure detention for 15 days while they await trial. However, my understanding and experience has been that it is virtually impossible to get a trial through within 15 days. Our concern is with what would happen after that period of time? To move them into secure

detention or treatment also creates a bit of a problem because, at this point in time, there are no beds and, as there are quite a number of children in open detention who are running and are repeat runners, how will the ministry deal with that lack-of-beds situation?

Although the portions of the act which pertain to extraordinary measures have yet to be proclaimed, we have several concerns or questions regarding the administrative admission procedure for a youth into secure treatment care, as proposed in the amendments.

One, we are very concerned about the underlying assumption or suspicion that the staff of treatment facilities cannot be trusted and, therefore, only an individual not employed by the facility may advise a youth of his rights. I have read the act and I really do not know who that person will be. I would be very interested in the committee advising us as to who that individual might be. Will there be training for that individual to deal with a young person who may or may not have the capacity at that particular time to understand what is happening, or in fact may have the capacity to understand at 12:30, but at one o'clock or 1:15, no longer has that capacity, and once again at 6 a.m. may have the capacity, and so on?

A number of our children are admitted because of alcoholic or drug problems that mimic psychiatric disorders. We have experienced a number of difficulties with the reluctance of mental health centres to care for a kid with addiction problems, psychiatric institutions not wanting to deal with a child who has drug problems, and it is a very vicious circle that I am not sure these amendments will help.

What happens to a youth who needs such a facility but, again, has fluctuated in terms of capacity? My other question would be, when do we have a right to remove a child's rights? I do not believe that is defined.

Mr. Chairman: Before we begin the questions, and there are already a number, I would point out that you have made your presentation in terms of a number of questions, and in many cases, they will be rhetorical. You have made your point very well, and you do understand that. I do not think there would be time to answer all of those questions.

Mr. Campbell: I appreciate the question about the swearing of warrants and justices of the peace being available. On the swearing of warrants, my understanding of the situation is that it is to try to balance the rights of the child that are still there and the rights of parents, to make sure that it is a legitimate request and that the information sworn to the JP is to his satisfaction, to make sure that the rights are balanced, those of the parents and those of the child.

On having the JP available at any one time, I know in the area I come from, JPs routinely are available because they have to be available for other court work, not only this situation but other situations, after normal business hours when warrants are being sworn. Impaired driving, for one, is certainly one that they have to be involved in. Those are points of information, perhaps.

Mr. Cousens: I appreciate your presentation, and I know we all do, because I think it offers a great deal of insight and guidance to us as we consider this important bill, and so I appreciate the way in which you have done it and the spirit behind it. I know I speak for all parties when I say that. I can assume that.

Interjections.

Mr. Cousens: Richard is always an agreeable person.

Interjection.

Mr. Chairman: Ms. Kelman, do not be drawn into that.

Mr. Cousens: One of your first statements—because there are so many things you said that I want to think about further—when you are concerned when you define children up to the age of 18, this is a real problem for the minister and for the law as to when one ceases to be a child or a juvenile and when one becomes an adult and how in fact some carry on into an older age. Could you tell me where you are coming from when you say 18? What do you mean by that, and what can we do, as legislators, to consider the problems that come for those who are in their 20s who are still having problems of youth?

Ms. Kelman: I understand that, for example, for a young person who has been made a ward of the state, at this point in time, at 16 it is, "Thank you very much, goodbye," and I understand that the societies would very much like to be able to receive funding in order to extend it to 18 or possibly 21 because adolescence, as you are all well aware, no longer ends at 18, let alone 16.

The parents throughout the province whom we are involved with are coping with an exaggerated and extended adolescence. They have 25-year-olds who are behaving like 12-year-olds, and 13-year-olds who are behaving like 18-year-olds. The 13-year-old wants to get involved with a night scene or a drug scene or drop out of school and the 18-year-old is living at home, using the home like a hotel, is not working, is not going to school, very often is stealing from the family, has vandalized the property on a number of occasions. Does that answer your question?

Mr. Cousens: Do you have any remedies in mind, any suggestions? This bill does not address that kind of concern.

Ms. Kelman: As long as we continue to encourage legislation, whether it is on education or mental health, that encourages a 16-year-old to think of himself as an adult and yet the Young Offenders Act does not consider him "an adult" until 18, we have a number of discrepancies throughout the ministry in terms of what we are really defining as a child or as a young person. Perhaps if there were a consistency, it might help the child, the existing systems and certainly the families.

Mr. Cousens: Can I just throw it back to the minister. Have you any suggestions on how we can begin to deal with this problem?

Hon. Mr. Sweeney: Not with 30-year-old children.

Ms. Kelman: No.

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Hon. Mr. Sweeney: The difficulty as you have well stated yourself is that there are different ages in both federal and provincial legislation, within provincial legislation, as to when children can do certain things. As a matter of fact if you go through the Child and Family Services Act there are references to age 7, to age 12, to age 16 and to age 18. They are all there

for very specific reasons and sometimes people question that.

Generally speaking in Ontario it has been accepted for a number of years, rightly or wrongly, but it has been accepted, that at age 16 the child can leave school, the child can leave home and the child can get married without much that we can do about it, quite frankly.

When the legislation was first under consideration back in 1983 and 1984 and even prior to that in the discussion stages, it was agreed there was no way any government today could enforce dealing with 16-year-olds the way you were dealing with them below 16, so no attempt was made. So the legislation that we are talking about now, and the amendments that this bill specifically refers to, do deal with those under the age of 16 with respect to runaways and with respect to curfews.

The sections dealing with secure treatment, however, do include all those who are legally children, in other words, right up to their 18th birthday. With their consent it can go beyond their 18th birthday. It is a difficulty. I have children of my own. I know what you are saying. I fully understand when you talk about a 13-year-old going on 21. I have had daughters go through that stage.

It is difficult but this legislation is, as Mr. Cousens said, not designed to deal with that particular aspect of it. There are limitations on legislators as there are on parents.

Quite frankly one of the things that we have all learned, those of us who have been around here for a while, is if you cannot enforce it there is not much point in passing legislation—if you know you cannot enforce it. That is what we are trying to do with legislation. What do we legitimately and honestly believe we have a chance of enforcing—no guarantee but at least a chance?

Mr. Chairman, can I speak to a couple of the questions that were raised?

Mr. Chairman: By all means, Minister. Could you be relatively brief? I have three people on my list.

Hon. Mr. Sweeney: Very brief. You asked, "How are parents supposed to know about the warrant?" The normal procedure, as you yourself indicated, is that the parents would phone the police. The police would tell them what the procedure is. If you have some suggestions to us as to how else parents might be advised, please share them with us.

Ms. Kelman: I do, minister. It has come to our attention through the variety of educational conferences that we run throughout the province that parents are in desperate need of knowledge of what their rights are as parents, not just with community and social services legislation but with criminal legislation or educational legislation.

The average very bright and very caring parents do not have a clue as to what their rights are. When they get into trouble, when their children involve them in problems, all of sudden they feel in 1988 that they have no rights. In fact the societies have clearly stated, "Well, really parents don't have very many rights and that a young person has the right to refuse treatment and they have the right to leave school," as you said.

Really, although technically it is 16, in fact we all know many, many

people who are leaving at 14. So realistically we have to talk about 14-year-olds now being able to leave the education system. When we talk about housing, 20 years ago housing was not a problem or as much of a problem as it is today. So the likelihood of young persons leaving and finding work and finding themselves accommodations is very slim today, versus 20 or 30 years ago.

My concern or perhaps my recommendation, and I know we would be very happy to be involved with it, is a handbook on children's rights, excuse me, parents' rights. But it has to be triministry.

Hon. Mr. Sweeney: It is coincidental that you should have had that little slip of the tongue because in fact we do have a little booklet out for children on their rights, but we do not have one for parents. That is a legitimate point.

I do not want to take the time. Can I just also advise you, and I think Mr. Campbell has already indicated, that justices of the peace are on call 24 hours a day. They are required to be by law.

With respect to a shortage of beds, to the best of our knowledge there is not a shortage of secure detention beds. There may however be a shortage of secure treatment beds, and I was not sure to which of the two you were referring. There is some pressure in certain parts of the community but, generally speaking, we have a sufficient number of secure detention beds.

Mr. Chairman: I think we should return to the committee.

Mr. Allen: Thank you very much. I appreciate very much your coming before us representing the Association of Parent Support Groups in Ontario Inc. I guess your last question was one that struck a chord with me. I do not want to pursue it strongly, but when do we have a right to remove a child's rights?

I guess the real difficulty that all of us find in this kind of legislation is that such things as dealing with runaways or dealing with curfew questions affect quite a broad spectrum of young people—or can, potentially, even if one did have all the faith in the world in all the apprehending and treatment agencies and so on that are professional that are out there. Still, our haste to do things to get a piece of legislation in place for the summer so that we will have everything in readiness for the summer runaways can obviously foreshorten our consideration of a piece of legislation that needs a lot of very careful reflection, I think. I am myself, quite frankly, finding it somewhat difficult to take in everybody's concerns in the course of a couple of days of hearings.

Mr. Campbell: On a point of order, Mr. Chairman: I believe all House leaders agreed to this process. Whether or not it is difficult for the member, I think it should be noted that all House leaders agreed to the process. That is my understanding. I stand to be corrected.

Mr. Allen: Whatever the House leaders agreed to, I personally state what I state. That is a matter that I think most of us probably have feelings about on this committee. It is very easy to jump to an emotional conclusion about runaways or about kids who are out between 12 and six. I mean, I am a parent and I get those anxieties too, but the legislation that surrounds them and their apprehension is obviously a matter of great concern to all of us.

You did say at the beginning that the majority of kids are not running from abusive environments. Does your organization have statistics on that which give us some of that kind of information? To date, the ministry has not provided us with that kind of information, and I do not know whether it has it or not.

Ms. Kelman: As a self-help volunteer organization with no government funding, our statistics will be general, but when you judge 1,000 parents throughout Ontario and you are in fairly regular contact with the facilitators of the self-help groups throughout the province, you get a very strong feeling of what the story is.

Bear in mind that our parents are not ordered into these programs by the court. They go voluntarily. We will not be seeing a father who whips and beats his 12-year-old and sends her out on the street to prostitute for his liquor money. That is simply not the profile. We are seeing good parents who may be on assistance. They may be professionals. They may be truck drivers. They may be psychiatrists and they are working hand in glove to try to deal with their children who are in crisis. There are runners who are running to a party or another kid's home. Because we do not receive funding from any ministry, we can talk perhaps a little more openly and honestly than some agencies can. We are just not seeing the statistics that we read about every day in the papers.

Mr. Allen: Thank you. Mr. Chairman, you may recall that yesterday, when representatives of the police were with us, they referred to careful and detailed statistics that they have on runaways and on the reasons for the runaway incidents. I would like to ask the minister what kind of documentary evidence he has assembled in the ministry in order to lay an evidential base for this piece of legislation, because I believe that yesterday the police representative indicated that he had not been asked for that information by the ministry.

Hon. Mr. Sweeney: No, Mr. Chairman, we do not have the information the police have. We have been in contact with them to get their sense of what their experience has been. The prime reason for moving ahead with this, as I think I indicated in the House, Mr. Allen, is that the feedback we were getting from children's aid societies, parents and the police themselves is that the kids simply were not being picked up under the existing legislation. If we wanted the intent of the legislation to be carried out, we had to change the wording.

I understood from Inspector Dennis, I think it was, yesterday that he would share his figures with the committee. I presume they would be passed on to you since you are a member of the committee, but I do not have the same figures he said he has.

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Mr. Allen: I would certainly appreciate our having a substantial base of information to work with, because, quite frankly, it is all well and good to get the evidence of professionals and to get anecdotal evidence from parent support groups and so on, but there must be something much more tangible that we can get our teeth into in this committee to give us some sense of what the proportions of the problem are. Who is running and who is not? For what reasons? That would obviously set our minds somewhat more at rest in terms of the return process and what children are being taken back to. If there is some substantial evidence of that kind, it would be very helpful to us in the committee.

Hon. Mr. Sweeney: My only recollection directly was that the police had indicated to us that their records show that a very significant number of these kids were not running away from abusive homes but were just running for the sake of running. They wanted to get out on their own and do their own thing, but I do not have the specific numbers.

Mr. Chairman: We will be following up Inspector Dennis's suggestion. I believe he also mentioned a study which has been done quite recently, which he said he would track down for us.

Mr. Matrundola: I do sympathize with Ms. Kelman and the association in the problem they have with the subject matter. How urgent and how important is the need for a justice of the peace to be available in the middle of the night to swear an affidavit?

Ms. Kelman: I understand from Inspector Dennis, as it happens, who works fairly closely with us, as does his staff—and they have been very supportive—that the first 24 hours are the most crucial and critical when a young person has run. I understand at this point that the general wait at the best of times is four hours. In fact, it is somewhat difficult to get a justice of the peace who is familiar with the Child and Family Services Act legislation. Our concern would be, will there be training provided for the JPs? I understand that would be the Ministry of the Attorney General, not the Ministry of Community and Social Services.

As I said, we do not have a problem per se with the amendment; our concern would rest more with the implementation of that. Yes, I think there would be a concern that immediate access to a warrant would be appreciated.

Mr. Matrundola: Do you have problems in securing the warrants?

Ms. Kelman: We have not had to get one before. You could not pick up a young person in the past, and it is true the police were not able to pick up a young person who had simply run away.

Mr. Matrundola: For the benefit of the committee, I would say that sometimes the JP will decide whether or not he will issue a warrant. I did once have need of a warrant and I really had to press my way through, sort of tell the JP I was going to go out and get witnesses if he refused to issue a warrant. They seem to have the law too much in their hands. If the JP is asked to issue a warrant, I believe it is his duty to issue the warrant. The person who requests the warrant should be responsible for the actions; it should not be the JP deciding.

Mr. Chairman: Thank you very much indeed.

Ms. Kelman: Thank you for giving me the opportunity to present.

Mr. Chairman: Your association's position has been very well put. Thank you.

Our next presentation is the Ontario Association of Children's Mental Health Centres; Ms. Weinstock, I believe. I think members have the written brief. If each of you could give your names clearly into the microphone for the benefit of the people in the booth there, I would be grateful. Perhaps we can start.

ONTARIO ASSOCIATION OF CHILDREN'S MENTAL HEALTH CENTRES

Mr. Rothery: My name is Michael Rothery. I am the past-president and treasurer of the Ontario Association of Children's Mental Health Centres.

Ms. Weinstock: I am Sheila Weinstock. I am the executive director of the association.

Ms. Eakin: I am Lynn Eakin. I am executive director of the J. D. Griffin Adolescent Centre, one of the member centres, and I am on the members' legislation committee.

Mr. Chairman: I might say for people in the audience who, like me perhaps, are hard of hearing, the devices which are there are not only for translation, but they tie into these infrared things here. If people—someone mentioned it yesterday—have difficulty hearing, they can use those.

Please continue.

Mr. Rothery: If it is appropriate, we will just read our very brief brief and then entertain questions.

Mr. Chairman: By all means.

Mr. Rothery: First of all, we appreciate this opportunity to present the views of the Ontario Association of Children's Mental Health Centres on Bill 107 to the standing committee on social development.

Our association represents 82 children's mental health centres which provide mental health treatment services to children and their families all across Ontario. Centres offer outpatient services, home care, day treatment and residential services, including secure treatment for emotionally disturbed children and adolescents. At any one time our centres serve 10,000 to 12,000 children.

Children's mental health centres are multidisciplinary in approach and, as a result, we have social workers, psychiatrists, psychologists, child care workers and other mental health professionals on staff. Most centres are governed by voluntary community boards of directors, and there are about 1,000 such directors currently in our system.

Our association has been actively involved in the development of the Child and Family Services Act from its inception and before, and we strongly support Bill 107. Since the earliest discussions of the omnibus legislation, we have reviewed legislative proposals from the perspectives of children needing treatment and the centres which provide mental health services. We have supported those sections which enable children to obtain the help they need and criticized sections which obstruct access to service or prevent centres from providing services effectively.

Bill 107, we believe, demonstrates that the Minister of Community and Social Services (Mr. Sweeney) and his staff have listened carefully and are sensitive to our concerns. We recognize that there is a delicate balance to be struck between safeguarding the rights of children and meeting their mental health needs. In our opinion, this bill goes a long way towards finding an appropriate balance.

We wish to address ourselves today only to the specific amendments to the Child and Family Services Act which directly affect our members and about which we have some experience.

The first of these is disclosure of records in court. We strongly support this section which protects the records of a child from disclosure in court if a physician states that such disclosure is likely to result in harm to the child or any other person. This gives children equal protection to that afforded adults under the Mental Health Act. In our experience, disclosure of personal records of clients of children's mental health centres in court can have disastrous results. Therefore, this section responds to one of our most serious concerns about the Child and Family Services Act and will prove to be of significant benefit to the children and families affected.

The warrant issue: Children who run away from home often find themselves on the streets of our cities, where they are in serious danger. Many are not mature enough to recognize the risks they are facing. Ontario needs an effective mechanism to ensure that a child under the age of 16 who runs away from home can be apprehended and removed from a dangerous situation to a place of safety. We therefore strongly support the sections of Bill 107 which enable a parent and/or guardian to obtain a warrant so that a peace officer or child protection worker may apprehend a runaway child under the age of 16. In our view, this will enable the system to fulfil the intent of the Child and Family Services Act and will serve the best interests of children.

Secure treatment: Overall, the amendments regarding secure treatment in Bill 107 represent a major improvement over the early versions of the Child and Family Services Act. Two provisions in particular add the flexibility necessary for service providers to meet the needs of individual children in varying circumstances.

Where a hearing is adjourned, a child may now be committed to a secure treatment program on an interim basis if he or she meets the criteria for commitment. In addition, if a child becomes 18 years of age while in a secure treatment program, an extension may now be granted. These two amendments will prevent young people from being discharged into the community with no safe place to go. This kind of flexibility is essential to enable the service system to respond to the needs and best interests of children.

Emergency admission: The amendments dealing with emergency commitment to secure treatment programs are also particularly welcome since, without them, seriously disturbed young people would have to go without treatment and service providers would be unable to help them.

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One important provision modifies the criteria for emergency commitment so that they enable centres to respond to crises by providing secure treatment on an emergency basis to children who, because of a mental disorder, threaten harm to themselves or someone else. These less restrictive criteria make it possible for families and service providers to take the necessary action to prevent child and adolescent suicide, a phenomenon which seems to be becoming all too common.

We also support the amendment which allows a service provider to admit a child for up to 30 days on an emergency basis. This section, which includes an appeal mechanism and child advocacy support, will give crisis units enough time to deal with the emergency facing the child and also arrange for

discharge to a safe place. Discharge planning for children, because of their need for care and supervision, is more complicated than it is for adults under the Mental Health Act. Without this amendment, crisis units would be forced to send young people who are still at risk back out into the community without adequate support.

In summary, we believe that, on the whole, the amendments presented in Bill 107 have been carefully thought out. They safeguard the rights of children while providing them with safety and professional help when they need it, or at least the opportunity for those things.

We also would like to congratulate the minister on this bill, and we urge that the Legislature adopt it as soon as possible. I think it is important.

Mr. Allen: I would like to make some inquiries about the contents of records and who contributes to them. Could you give some explanation to the committee as to who are the people who might find themselves contributing to a child's record that might then be used in court?

Mr. Rothery: The records issue is still up in the air.

Ms. Eakin: The definition of a record, I understand, in that section of the act under the Child and Family Services Act, is still under review, but traditionally the records have comprised all the notes and records of the treatment that a child has received in a centre. They would have notes from the social workers, from the child care workers, from the psychiatrists and from the psychologists. All that would be held in the child's clinical record in the centre and would comprise the record of the centre.

Mr. Allen: Would all those people be considered fully competent specialists in their field in every case?

Ms. Eakin: Yes. I think centres usually have systems whereby records are reviewed by competent professionals as they go in, so they would be written by a variety of people, but they would be placed in the content of the record as the agency record.

Mr. Allen: I am not quite sure I got that. Do you mean that—

Ms. Eakin: Well, it depends on what you mean by a competent professional.

Mr. Allen: —there might have been contributions by people who were not specialists, but the record itself would be reviewed by somebody who was and, therefore, what?

Ms. Eakin: For example, if it is a psychiatric report, it would be written by a psychiatrist. If it's a psychologist, it would be reviewed. If the person had a masters in psychology, for example, it would be reviewed by somebody who is a registered psychologist who has a PhD. If it is a child care worker in a residence, for example, writing a report on the child's progress, it would be reviewed at the team meeting and by the supervisor of the residence as the final report. The record might be written by various people, depending on which piece of the child's treatment that person had responsibility for.

Mr. Allen: Would you explain to the committee why you consider that there is greater protection under these proposed amendments with regard to the handling of records than there was under the previous act?

Ms. Eakin: Previously we had this coverage under the Mental Health Act. It was only with the moving of children's mental health centres from the Mental Health Act to the Child and Family Services Act that we lost that provision.

What we have now is the reinstatement of that provision in the Child and Family Services Act so we can maintain the coverage that we had previously when we were under the Children's Mental Health Services Act.

Mr. Allen: In other words, this is an identical provision from your point of view.

Ms. Eakin: Very similar to what is in the Mental Health Act.

Mr. Rothery: A little more restrictive as it stands, but it is close.

Hon. Mr. Sweeney: May I make a comment for the benefit of the committee?

There is a perception that the records are either available or they are not available. It should be understood that when a physician goes before a judge to argue his or her case, the judge has the right to say that 90 per cent of the record will be disclosed but 10 per cent will not be, or any other percentage. It is not an all-or-nothing case.

I presume the physician would argue that this particular piece of information would not be in the child's best interest to be disclosed in court. The judge can, quite frankly, say that if that is the case, then all the rest of the record is then available. So it is not all or nothing.

Mr. Chairman: I wonder if I could ask you a question. As you will realize, we have had people appear before us who are not as supportive as you of these amendments. I think they fear that the children's rights are being unduly eroded by these amendments. Are you sure that these amendments are not doing that?

Ms. Eakin: To speak to the emergency admissions and the loosening up of that, what happened with the advent of the last version of the Child and Family Services Act is that it was estimated that in excess of half of the children that we had previously been admitting to secure crisis centres would no longer be eligible. There was great concern by the parents and the treatment staff that we be able to have that kind of safeguard and be able to admit children who were threatening to harm themselves, before waiting for them to harm themselves.

There has been no evidence in the past. It is not as if it is a terribly new practice, but it is one we wish to maintain because in the previous act the child had to do something within seven days. If you were serving a child in the community who you thought was at very high risk of doing himself serious damage but had not done anything in seven days, the worker and the parents were faced with waiting, holding their breath and hoping they would get home in time to catch the overdose or that the action would not be a fatal one at that point.

This facilitates our being able to admit. With the number of crisis treatment beds available in the city, I would not concern myself too much with abuse of this. We move kids in and out of treatment beds as quickly as we can because then we have the next bed available for the next young person who needs it.

Mr. Rothery: I have one question. I am a lay person. I am not a professional. I am an accountant. My feeling is that the whole thrust of these amendments is concerning itself with the safety of children, which as a parent I am most interested in. I do not think that it is taking away any significant rights from children, but I think the emphasis is on safety. That is where I am coming from.

Hon. Mr. Sweeney: Just one question. I think Mr. Allen raised it yesterday and I do not know whether he is planning to raise it again, but there has been some concern about removing the seven days. You touched on it briefly. Can you just share with us what your experience is then as to how far back you go? Someone suggested you could back two or three years. I do not know what your own personal experience has been.

Ms. Eakin: You mean in terms of a serious previous incident?

Hon. Mr. Sweeney: Yes.

Ms. Eakin: It depends on what you are trying to achieve. What we are trying to do is support kids in their communities at home with their parents. If we are going to do that, then we have to be able to provide that safety factor.

For example, we had a youth who had a year earlier taken a gun and shot himself in the head. We have not chosen to put that child into a residential treatment setting because we felt the parents and the youth could manage on an outpatient basis. We were supporting that child and that family very heavily in the community.

However, about a year later, he again went into a severe depression. With the previous act, we would have to have waited until that child did something. With a child like that, you do not sit around and wait when you see the depression coming on. You want to get him into a crisis unit and try to get him stabilized so that you can assure the family, so the family members have some confidence that when they get really frightened there are some safeguards for putting their child into a safe place.

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The alternative if we do not have that, is that those high-risk youths whom one can better treat in the community will be put into residential treatment settings because there is virtually 24-hour supervision there; so if they start to become depressed, you just up the level of supervision because they are getting it already.

It really depends on what you want to achieve. If you want us to be able to serve kids in the community, then you have to provide us with those kinds of safety nets to protect both families and kids in the treatment process.

Hon. Mr. Sweeney: I literally asked Mr. Allen's question, so I do not want to interfere with his right to one.

Mr. Chairman: I would like, if I could, to close it off.

Mr. Allen: I just want to make one observation about your comment about how you do not have to worry because our bed situation is such that we move kids in and out quite frequently.

If I might, I heard that kind of observation yesterday from a group with respect to another question and another part of this act, "Our practice is such that you do not have to worry." The problem is that the practice does not guarantee against abuse of an act that may have too much latitude in it from some perspectives.

I realize that is a difficult question, but the fact that you practise well or that your practice circumstances are such and such does not mean we should not be concerned about a specific provision in this or another act.

Ms. Eakin: I think in that instance that we have built in safeguards. We have the office of child and family service advocacy, which consults with the child upon admission. We have the official guardian, who is notified. At any point in time, the child or family can initiate a review of the situation if there are abuses.

What it gives us, on the other hand, is the latitude where a family, say, cannot take back a child. With a child who is at risk, you have to be able to manage to secure a longer-term resource for that child because, in a sense, there are two parts of a puzzle you have to put together with children under 16. You have the child whose rights you want to protect, but you also have the parent who is responsible for the care and supervision of that child.

If the parents, for example, cannot take back a child, then you have to be able to provide an alternative. It is not like adults where you can discharge them on their own authority. With a child, you have to find an alternative care person and set that up. That takes time.

Mr. Allen: You suggest that the child or the parents can initiate a review. If you have a circumstance where the family is not disposed to or just as happy to leave you to handle the problem and does not want anything much more to do with it—one hopes that is not very often but it is certainly conceivable—and on the other hand, the child really is not in a psychological state or otherwise to initiate for review or is not capable of or is not really fully, although he may have been informed, aware that he has that right or does not remember it, is there some reason to think that there should be some form of periodic automatic review, obviously not unduly frequent to disturb treatment, but none the less frequent enough to be a safeguard?

Ms. Eakin: The situation you are describing is where the parents are not perhaps interested in having a review because they do not want the child with them because a review would mean that the child would be discharged to them, and the child is not sufficiently well to think about initiating a review himself. My suggestion is that there you have a child who perhaps should be remaining in the crisis centre until we can get something better set up for him.

I think adolescents as a rule are prone to challenge things since they err on the side of anything. I think you could set up such a process, but I am not sure that the expense and the disruption to the bulk of kids would warrant it for the incidents, if there are any, where that abuse occurs.

From my experience, being with an agency that uses a crisis service as opposed to providing it, the problem has always been the reverse, that we are facing an early discharge before we feel the child, the family and ourselves feel we have sufficient systems in place to keep that child safe in the community.

That is by far our greater problem than the reverse. I have never had the experience of a crisis centre keeping a child when we were saying we were ready for the child.

Mr. Chairman: The next presentation is the Ontario Association of Children's Aid Societies. Will those concerned come forward? While you are coming forward, we do have another name on the list. Perhaps you will explain that to us, whoever is the spokesperson. Again, before you begin, perhaps beginning at this end, you could give your name and affiliation clearly for the benefit of the translators and Hansard.

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

Mr. Huether: I am John Huether. I am the executive director of the Children's Aid Society of the Region of Peel.

Mrs. Genereux: I am Anne Genereux. I am legal counsel with the Ontario Association of Children's Aid Societies.

Mr. Caldwell: I am George Caldwell. I am the executive director of the Ontario Association of Children's Aid Societies.

Mr. Ringrose: I am Peter Ringrose. I am the local director of the children's aid society for the region of Waterloo and also chairman of the OACAS legislation committee.

Mr. Caldwell: The other name you had was the Family and Children's Services of London and Middlesex. Mr. Liston has been in contact with us and we are coming today as their representatives, as well as representatives of the other societies in Ontario.

We are pleased once again to appear before you and to discuss amendments to the Child and Family Services Act, Bill 107. It is useful for us to report that the implementation of the act has proceeded with the care and with great co-operation among the judiciary, the children we have in care, the families we serve, the police, the ministry and our colleagues in the treatment field.

There were those who believed that the world would come crashing down on November 1, 1985, when the act was proclaimed, and we are rather amazed and somewhat annoyed, I suppose, that things continued as they were from the beginning.

Our report to you is that the legislation has been absorbed in the system, perhaps by a process of osmosis, although we have tried to do the training and the preparation and, generally, there has been an amazing smooth transition on a bill that has as many issues involved in it as this bill has.

The children's aid societies, from their vantage point and with their bias, stress that in legislation affecting children the test must be the best interest of the child. Above all else, this is the compelling principle we operate on. We are aware that you have heard representations and that there

are others who argue on the children's rights issue. We are not dismissing the importance of children as persons or that children have rights, but it is important that when the final account is taken, children have their best interests cared for.

There are those who do not believe that we look after the best interest of the children. We recognize that; we do have critics; but it is our attempt and our wish as we look at these amendments to bring to you our concern in regard to the best interest of the child. Perhaps more than others, we feel we are at the beginning in terms of amendments in regard to this issue, rather than at the end, so we come in great support of what the minister has brought forth in terms of the legislation, rather than coming in any hesitant or halting way about the legislation.

We too advocate policy to enhance and support the family and we recognize we are having difficulties these days in defining just what the family is; but it is our belief that this legislation and the way in which it has been implemented is a pro-family policy, leaving as best it can the nurture and the guidance of the child with the parents.

When it is necessary to intervene—and unfortunately it is, and that is our business, the protection of children—we have followed the dictates of the act in regard to the least intrusive measures. Our child-in-care population has declined, and it continues to decline, to a point just under 10,000.

However, there are a number of important issues that are contained in this amendment, and my colleagues and I will attempt to address those. I would turn at this point to my colleague who has been the chairman of our legislation committee and who brings a very wide-ranging perspective.

Mr. Ringrose: I think the experience of the children's aid societies in general with the Child and Family Services Act has been that it has had its good parts and it has had its bad parts. It certainly introduced some useful measures that we did not have before in terms of flexible services, for example, and the whole voluntary services section, and it brought in legislation where previously there was a vacuum.

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In other areas, the societies have always had some concern that the legislation perhaps erred in favour of narrowing the need for protection in the definition of a child in need of protection, which resulted perhaps in there being some situations in which societies could not reach children where they had been able to do so before. Specifically, I think the runaway situation is one of the most important ones and certainly one that has been noticed by the most people.

We see the amendments that have been put forward in Bill 107 as practical, sensible amendments that work in favour of the best interests of children. In general, we are very supportive of what you are proposing here.

I want to comment on one or two aspects of section 40, which is one of the major areas of your proposals. First, on section 40c, the runaway clause, this is obviously a very difficult measure to deal with. I do not think any of us should suggest that there is any easy way to resolve the question of runaways and how to deal with them. We see the ability of parents to obtain a warrant based on reasonable and probable grounds that the health and safety of the child may be at risk as a sensible step in the right direction.

There has been a long debate about how we should handle runaways. Should we, on the one hand, say that children should be controlled at every line end and that until they reach the age of majority, they should be subject to forms of restraint if they are not going to be beholden to parental will?

On the other hand, I think we tend to veer away from that these days and argue that such methods probably are not that effective. We have had them in the past and, even with them, it was still very difficult to restrain children who were determined to run away. To advocate a return to restraints, locking children up or whatever measures you would have, I think probably would not be effective, although there would be some who would like to see that happen.

At the same time, I think we should not assume that the runaway clause will necessarily solve the problem in that I do not think it will. What it will enable us to do, I think, is for societies to become involved, to take a second look at the situation and to examine whether a child is in need of protection within the definition of the act or, if not, at least to have the chance to offer voluntary services to the child and the family.

I think what we may find, though, is that there are some situations where the children who are running away are only too well aware of the availability of services and do not want them and will be determined to return to the street. Without a change to the definition of a child in need of protection, I do not think that will be preventable.

However, the societies are certainly not advocating a position of returning to restraining children by locking them up for lengths of time. Rather, we are seeing this as a step in the right direction and are advocating more experimental means, searching for new ways of dealing with runaways effectively that may be ways that we have not dealt with before. We think there is new territory to be cut out here and that returning to what we did in the past is not necessarily likely to solve the problem. In general, we are supportive of the direction being taken. We tend to see it as the least we can do, rather than the most.

With regard to the provisions around the recovery of runaway wards, section 40a, we are certainly supportive of the new measures being proposed there. We note that there is a clarification as a result of this section, that it will be no longer necessary for societies to establish that a runaway ward is indeed in need of protection. I am sure this confusion was never intended in the first place. I am glad to see this amendment has cleared that up. That will certainly be a relief for some of our agencies.

There have been a couple of very practical and sensible clarifications with regard to warrants. Certainly, the introduction of the provision that there is no need for a warrant to specify the location of a child is very welcome.

The predicament often faced by societies when dealing with runaways in particular is that you do not necessarily know where the child is. The child is at large somewhere in your community and you know he or she is going to turn up at some point, but you are not going to know the street address in all likelihood. We certainly see this provision as recognizing the reality. Those are my comments.

Mr. Huether: I am pleased to be able to address you on section 6 of the bill, which relates to subsections 75(5) and (6) of the act, which are the

curfew provisions. Recognizing that these suggested amendments are made in the context of the overall principles of the act which affirm the autonomy and integrity of the family, we think the recommended changes are very much worth supporting and are important improvements to the Child and Family Services Act for the following reasons.

First, they clarify parental responsibility in relation to curfew and parents having control over with whom and when their child is out beyond a reasonable hour. Not only does this clarify parental responsibility; it also strengthens parental authority to carry out that responsibility. As we heard earlier, without parents having the ability to act with authority in carrying out their responsibilities, their hands are tied.

We also feel that for young people under the age of 16 it is not unreasonable to set some limits in relation to whom they associate with as well as the hours they keep. Therefore, the act sets out some parameters around that which we think are reasonable. From the police point of view, this clarifies who makes the decision as to whom a child can be with. We think that is a positive step in the right direction.

This section of the act makes it possible for children who are unfortunately running away from homes where they feel they are mistreated or abused to have the intervention of the children's aid societies should they request that. So we think the amendments complement the intent of the act from the beginning in terms of strengthening the autonomy of the family without compromising or unduly intruding upon the rights of children who we agree must be protected and respected.

Just as a final comment, we are also looking at the changes in section 8 and section 9 relating to children who run away from open detention. We support the ability of the authorities to be able to have those children have access to secure detention, both for the safety of the children and for the safety of the community, and as a means of providing a deterrent effect for those in open detention who have to try to prevent those children from running away.

We also are supportive of the minor changes in section 10 which clarify that the societies have the ability to apply for children in their care to have access to secure treatment. The few children who are in need of that kind of service in our care are very much in need of that service. The changes in the act in that regard strengthen our ability to access that. We appreciate that.

Mr. Allen: With respect to runaways and children who run from home, what is the experience of the children's aid societies? Are children normally running away from a problem home situation and, if so, normally of what degree of severity? Are you satisfied with the protocols that exist around the intervention of police and the return of children to home situations, etc.?

1650

Mr. Ringrose: I think the fact of the matter is that children do not run away from home without good reason. There are a wide variety of reasons, I think, why children run away. Some of them certainly have been exposed to sexual abuse. I think we are all aware of that. But I do not think that is, by any means, the exclusive reason that children run away.

In my experience, I have certainly come across situations where the family, over the years, has simply not been perhaps assertive enough over the child in terms of what the rules and expectations are. A child reaches the position of thinking he or she can do whatever he or she wants. If the life at home is not everything they want it to be, there are some children who will take to the streets to look for an alternative.

I also see those situations as being very unhappy situations for children. I would certainly say that all runaways, in my experience on the street, are there because of some unhappy experience or other at home. I would not necessarily see the children as being in danger if they are returned home. I think the provisions under the new clause here provide ample opportunity for agencies to become involved and to offer help. Also, there is no obligation upon a child to remain at home either.

Mr. Allen: If the normal situation is one of significant problems at home, why would one wish to provide the parent with the quite specific means of apprehension that are detailed under the amendments, which require only that the parent give some reason to think the child is at risk without apparently having to provide any substantial evidence that that indeed is the case? Or is that the way you read that section?

Mr. Ringrose: I think the parent has to provide reasonable and probable grounds to believe that the child's health and safety are at risk.

Mr. Allen: Could you enumerate what kind of reasoning, evidence or whatever that might have to be, for the parent to be normally expected to provide a justice of the peace?

Mr. Ringrose: It is a little difficult to be specific about that, but obviously a parent would not be able to simply appear before a justice of the peace and say, "I would like to have my child picked up because I think he is at risk."

They would have to provide some reason. They could perhaps describe the people that the young person may be associating with, the place to which the young person may have gone or a location in which the child may have been seen. There would have to be some grounds for concern raised, without perhaps going as far as to demonstrate that they are substantial risks.

I think it boils down to the question that we are dealing with children. We are not dealing with adults. Adults can perhaps generally make good judgements for themselves as to what is right and healthy for them to do. I think we should not assume that children can always do the same thing.

If children of 12, 13, or 14 are on the streets in a city such as this and we simply leave them there and say that there is not much we can do, I do not think we are doing enough to protect their interests. I would rather err on the side of having children picked up so that we can look at the situation, at least to see if there is more help that can be offered or something that can be done, than let them run and leave the situation as it is.

Mr. Allen: Inspector Dennis and his colleague yesterday assured us that in the course of returning a child to a home, even though the child may not have indicated that there was some abuse, they normally have a good sense of what in fact the state of that family is. Is that a judgement that you would concur in?

Mr. Ringrose: I do not know. I do not think I could comment on that.

Mr. Allen: Do you have any comment around the protocols that surround the normal return of a child under such circumstances?

Mr. Ringrose: I do not know exactly what the practice of the police is in such a situation in terms of how far the police look into the situation. I certainly hope that they would not hesitate to call the local children's aid society to see whether it had knowledge or whether it would be prepared to become involved too. But I really cannot speak on their exact practices.

Mr. Allen: Do they normally do that?

Mr. Ringrose: It is not uncommon, certainly. I think the police generally do not want to get too deeply involved in family situations themselves and would rather have another agency involved that specializes in that kind of business.

Mr. Huether: It varies from municipality to municipality, but those police forces that have youth bureaus, in particular—I know from my previous experience with Metropolitan Toronto Police as well as from our experience in Peel with the youth bureau and with a number of other communities such as London that have youth bureaus that the police are very skilled in picking up those kinds of messages from kids and making appropriate referrals or laying out for parents: "Look, you have got some problems here. It may not be the child's fault and it may not be your fault, but you need to get some help. Think about it and we will make a referral if you want some help in that regard." I think there is an increasing awareness on the part of police forces throughout the province of this kind of need.

Hon. Mr. Sweeney: Can I just make one point? Mr. Ringrose indicated that those kids who are streetwise and legal-wise know that even if they are brought home, they can run again and there are ways out; yet the other extreme is that you cannot tie them up.

We will be having some other amendments to this legislation in the fall. If you have any suggestions as to what the middle ground is between those two extremes, we would certainly appreciate getting them. We have had some difficulty searching for them.

Mrs. LeBourdais: Could I ask one brief question before you go? With regard to children who are streetwise, for those who are perhaps not terribly sophisticated in an overall general sense, where did they get their first knowledge of the law? Is it when they break it repeatedly and then learn how to get around it? Where do they first learn that aspect of how to use the law in their favour from their perspective?

Mrs. Genereux: I think a lot of the times they learn what they learn, whether it is accurate or otherwise, on the street. One of the things that I believe these amendments can do is assist us and assist the police in stepping in at an early stage so that we can break that cycle. Maybe we can catch them a little earlier.

Earlier this year, in March, the association together with the ministry sponsored a two-day seminar workshop on runaways. Part of what we were looking at is what we can do creatively to stop the kids at the front end. Maybe there are some preventive programs but also some things that we can do within our own systems. That was across the board, including education and health.

A lot of what they learn, they learn on the street, which is not always accurate but they take it as gospel and then they work from there, which often is to their disadvantage.

Mr. Chairman: I thank you all for the presentation on behalf of the children's aid societies. The next presentation is from the Pape Adolescent Resource Centre, Ms. Fay Martin.

While Ms. Martin is coming forward, I would like to say to the committee that I have to leave and our vice-chairman, Linda LeBourdais, will be taking the chair. Before I leave, I would remind all members that if they have amendments, we would be glad to have them in advance of the clause-by-clause hearings on Thursday.

The Vice-Chairman: Ms. Martin, you would please give your name and your association so that we have it for the record.

FAY MARTIN

Ms. Martin: My name is Fay Martin and my current capacity is that of program supervisor of the Pape Adolescent Resource Centre. I want to make it clear at the outset that I am not appearing here in my official capacity, but as a social worker with 20 years of experience—stop counting at 20—most of it with the kinds of children and families that the Child and Family Services Act deals with.

1700

I am quite sure that this committee has heard from people who are much better versed than I am in the fine points of children's rights and the subtle erosion of those rights that is embodied in these amendments. I will not address this further, but I would like the committee to understand my comments within this context.

The reality of my professional life is that the rights of children are directly constrained by what is available, legislation and intent notwithstanding. That is, there is often a gulf between what we can do under the legislation and what we do in fact. That has been an issue in the debate surrounding these amendments. Are further legal measures necessary to allow the police to pick up teens who are at substantial risk or is their stated inability to do so an indication of some other factors?

For me, the central issue is whether the resources are available to (1) correctly identify and (2) effectively intervene in the lives of children at substantial risk both at the time that the child comes to official attention, when the child gets picked up, and in the events that follow.

When I was doing frontline protection work, police frequently stated that they would not bother to pick up missing juveniles because it was a waste of time. They would only run again. When I quit protection work, it was because I was very aware that the situation to which I delivered children whom I had taken out of inadequate homes was often also inadequate; perhaps even equally inadequate although in different ways.

To address first the issue of correctly identifying teens on the street who are at substantial risk—that is, knowing who they are and not mistakenly scooping them, such as the Globe paper deliverer—I thought that Mr. Johnston, in his response to the tabling of this amendment, was quite eloquent and correct. It is not at all a matter of when the kid is on the street but under what circumstances the child is on the street. I do not think it is that difficult to tell a "not OK" circumstance from a "not so good" circumstance. What is difficult, I think, is deciding what to do then.

The act allows, as you well know, for the intervening official to either return the child to his parents or, if that is deemed inappropriate, to take him to a safe place. The task of discerning whether the setting from which the child is running or has absented himself is safe or not is, in my opinion, incredibly difficult. Who really know what happens in a house within a family? Perhaps not even the people who live there know. I have in mind, of course, incest families, where some members of the family are often unaware of what is going on.

Certainly the person, the official stranger, who comes to the door to investigate a behaviour might not be aware of the existence of a problem or aware of the seriousness of the problem. There is no question in my mind at all that running away always indicates a problem. Always. The difficulty, even if we start with agreement on that point, and I am not sure that we would, is in correctly defining the nature of the problem.

I work with young people now who have lived in situations of physical and sexual assault for years without its ever having been identified. These same youths, years after being removed from those assaultive situations, often without a full disclosure of the situation, still have difficulty saying the words that describe that reality: "My mother beat me. My father had sex with me."

Given that, do we think such a child would make a definitive statement to an official stranger who appeared at his door to investigate running away or being out late? Do we think that the parents would easily mention these circumstances? If we think that these sorts of statements would not or might not be made, what should we do to ensure that a good decision about returning a child to his home or not is made?

It seems to me that our intervention would need to be as complex and as creative as the problem itself, if it were to stand a chance of being effective. That takes time. It takes training. It takes skill, honed and mellowed by experience. Does this government or does this society supply the resources to do that job? I think not.

I think that we continuously economize in this area, perhaps in the hope that a little will be enough, perhaps in the fear that if we fully define the problem, society will succumb to its irresolvability. I think this amendment is this kind of economizing. If we blur the line between being out late and running away, if we make it an issue of police power rather than assessment skill, maybe a tiny inexpensive change will help and we do not need to worry our heads further.

This amendment, I believe, is in the tradition of chronic underfunding of the children's aid societies and attendant services and of the "do more for less" syndrome with which we in the field are discouragingly familiar. Until

the problem of the specific runner is solved, the problem continues to be there even if we cannot figure out what it is. So the teens continue to run until they get into a situation where they are apprehended and taken to a safe place.

Well, some do and some do not. I think it would be very interesting, but also very threatening, to see some good research on what differentiates those two groups, both in terms of eventual outcome—do the ones who come into care and get treated do better in the long run than the ones who do not?—but also eventual cost to society. In the long run, where are the productive members of society? From which group do they come? Or is there, in fact, a difference?

However, for those children who do go to a safe place, let's look at what happens.

The first thing that you want to happen when a child gets taken to a safe place is that he or she makes a choice to stop running. I would say here that you cannot make a kid stop running. The best you can do is provide a situation in which he chooses to do so. If the child chooses to do so, there is at least some possibility of giving him the help he needs to identify his problem in a way that suggests what needs to be done to solve the problem.

I have said that children often do not say what the problem is that makes them run. More than that, often they do not know. It is too complex or too painful or too overwhelming to be formulated as a thought. This is called denial, and it is a mechanism that we all use around handling things we cannot handle when life gets really tough.

For example, think of how long and what courage it took you to say to yourself a statement that began to sum up the fullness of a terrible situation: that your wife was planning to leave your marriage or that your child was diagnosed with a fatal illness or that your son was critically injured in a car accident or that your financial portfolio had failed massively. Yet formulating the problem is a necessary condition to solving it. So when teens on the run are taken to a safe place, it is crucial that they receive assistance in formulating the problem.

Again, if you think about the circumstances you would have wanted to be in place when you were dealing with the realization of a truly terrifying situation, you would probably want physical comfort, solitude, knowledgeable people, sympathetic or empathetic people. You might want old friends, loved ones, privacy, control over the process by which you digested that fact; all of those things. Ask yourself how many of those resources are available in the safe places to which children are taken.

I am not personally aware of the resources, even in Toronto, but I have a strong impression from talking with young people who have sampled such places across Ontario that very often few, if any, of the conditions for this work to happen are present. If we expect young people to formulate their problems, we must provide the circumstances.

When the problem has been formulated in a way that the young person thinks offers some hope for improvement, then there is a possibility of effective treatment, if the resources are there. Often they are not: not enough resources, not good enough resources, not creative enough resources, not flexible enough to tailor the treatment to the child, and if you treat the problem apart from the child, the child will not stay involved and the treatment will not succeed.

Much of the treatment available to young people today is akin to, "Take two aspirins and call me in the morning." It does not begin to approach the kind of specificity or continuity that we have learned to expect in treatment of medical difficulties, for example, or that we, as discerning and assertive parents ourselves, would seek for our own children in the event of life-threatening conditions.

Surely we can do better than we have for those children who are most distressed, most disadvantaged, most in need of assistance, those in whose interest the government is redrafting this legislation.

These amendments, in and of themselves, constitute a subtle erosion of the stated intent of the original legislation; but perhaps more dangerous, they give the appearance of action on the very real problems facing youth on the street, youth in trouble, without making it one whit more likely that they will get effective help. Ineffective help is no more useful than no help at all, except to the would-be helper who can say, "Well, at least I tried."

I think I will continue to be disappointed until changes that effectively deliver the intent of the original legislation are achieved. I think this amendment is in the order of, "Well, at least I tried." I do not know if legislative amendments are in fact necessary. What I do think and know is necessary is the political will and the financial commitment to do what this and the previous government said it would do for children at risk.

That is my statement.

1710

Mr. Campbell: When you were talking about runaways you stated that in every case there was a reason for their absence from home. I asked a group yesterday whether it ran the gamut from parental discipline of a very, I would think, regular form of discipline to the gamut of sexual, physical, emotional or psychological abuse.

In your opinion, could you give me a percentage of the kinds of people from the abuse extreme to the—I am not doing my homework, for want of a better term. I am a lay person and perhaps that is evident in my question, but could you give us an idea?

Ms. Martin: My statement really was that it always indicates a problem. In the very best scenario, the child runs away because he was inadequately supervised. When that is brought to the attention of the parents, they all sit down and solve the problem and everybody lives happily ever after.

I think there is a proportion of runaways, if you like, particularly of the younger variety, in which that is where it begins and that is where it ends. It is a very rapidly cycling situation. I really could not accurately give you percentages. I just do not have the scope to do that.

But the point I wish to make is that it is probably grossly underestimated. To pick up a child on the run and return him or her and to say there is not a problem, or there is not a real problem or that the problem will be solved by the action of returning the child, I think is simplistic. It would underestimate the nature of the problem. I am also saying further that we do it because we are not sure what to do if we work harder at defining the problem.

Mr. Campbell: I guess the sense of my question is, because you are a professional front-line worker or have been in the field, that you may have a better sense than perhaps I do of the percentages. I was not asking for 10 or 20 per cent but an idea, perhaps a ball-park estimate, of what the situation is.

Ms. Martin: They are all serious if they do not get solved because if they do not get solved, the kids continue to run and then they get on the street—I just picked up the last part of your previous question—and that is what happens. They get on the street. It is a survive-or-be-a-victim game and they are down the road. They are already on the way. Other factors intervene. So they are all a problem if they do not get solved. So they are serious in that sense to the individuals involved.

The kids I work with are a bad subsection in that the kids I work with have come from horrendous situations. Almost always the kids I have worked with have come from awful to horrendous situations. So I bring a very skewed point of view.

What I do know is that when I was a front-line worker I am sure I underestimated the problem. I am sure I did and I considered myself a very good worker. I worked very hard at it and I am smart but I still underestimated it a lot of the time.

Mr. Campbell: I am sure you did. Thank you for sharing those views with us.

The Vice-Chairman: Any further questions at all? OK. Thank you, Ms. Martin, very much for your presentation. Oh, I am sorry.

Mr. Allen: Sorry. I apologize for the interruption. It had to do with another matter that was rather urgent. I did not want to let you go without at least thanking you very much for coming. I did want to ask you a question though, unless this has been asked. You will correct me, Madam Chairman, if it has been.

Perhaps you could tell us a little bit about the work of your adolescent resource centre and what you do at the Pape Adolescent Resource Centre? Could you put in context for us your remarks and what your experience is in that setting? That also leads you to some of the conclusions you have given us this afternoon, which I think are very helpful.

Ms. Martin: In effect, I had hoped I would be able to bring with me one of the young people I currently work with, but she ran into a crisis and was not able to make it. I work with young people who are leaving the care of the children's aid societies here in Toronto, both the Children's Aid Society of Metropolitan Toronto and the Catholic Children's Aid Society of Metropolitan Toronto.

So the population I work with are kids who have been removed from homes that have been deemed inadequate and who have been in care, some of them for most of their lives. They are now at the age of 16 to their early 20s, making the transition into living independently in the community. That is the program I run. It is a program funded by Ministry of Community and Social Services, which suffers from chronic underfunding, which is why I feel quite strongly about this whole issue.

I am very aware of the amount of assistance that needs to be given to

these kids for them to make the transition to being productive members of society. Most of them—I have hardly met any who have not—have the ability to make that transition if we help them overcome the incredible deficits they have experienced as a result of, first, their family orientation and, second, often the problems that have either been untreated and allowed to mellow or have been inflicted by their being in care. As I think we know, children in care are at risk, more than your kids or my kids would be. They are doubly damned, in a sense, and require a lot of help to make it up to running speed so that they can, in turn, be good citizens and taxpayers. That is the job, and it is not easy.

The young woman I wanted to bring with me today was a kid on the street who ran and ran. She ran for probably a year before she really hit the street and stayed there, and was there for about eight or nine months. She left the street because she happened into a setting. It was Moberley House, which is basically for kids who are hooking. She was not hooking, at least not yet. She was certainly parlaying sex for any other necessities of life, but had not got to the point where she was parlaying sex for money. Because she was quite young and was not exactly within the mandate of the agency, her perception, which was very enlightening, was that they then treated her differently; they treated her like a person instead of a client, and she was allowed to stay a few days longer than usual. Within that time, she really was able to get hold of herself and say, "Hold on here, what am I doing?" and make a choice not to run.

Her life is certainly not without its bumps, and she is a long way from home-free, but she has been a nonrunner now for coming up to two years or a year and a half. She is just beginning to struggle with some of the underlying problems, the rejection at home and the sexual assault that she experienced because of rejection and inadequate supervision.

The reason she is not here is that she has hooked into an abusive relationship and split with her boyfriend after the police were called last Friday and has run to the relative safety of her family. Life is more complicated than most of us raised in middle-class homes could ever even think about it being.

If my personal children, who are also teenagers, had anything close to those kinds of difficulties, I would be in the yellow pages looking for all kinds of assistance and support and making it a full-time priority, and yet I do not see that society does that for these kids, even though we, as society, are their parents. We are the ones who said, "We are going to rescue you from a situation," and then we put them into a situation. You probably all have seen or heard from prior presenters about the fostering in the 1980s report. What it says is that we have put kids into foster homes that have three times more children than the regular family in Ontario. That is like taking your kid, who gets hit by a car and needs intensive care, and putting him on a general ward. We would not do that to our kids, but we do it to our society kids.

Foster families have \$10,000 a year less income than the average family in Ontario. They have less education. They are exactly the kind of family that the Radwanski report says do not do well with the school kids. At the same time, kids coming into care at age 12 are one year behind academically. We put them into a situation in which not only is the remedial help not there but that is exactly the kind of resource that is least likely statistically to be able to help them succeed in school.

I guess I could go down all the lists of the sectors in which we fail to do what these kids need. We think, "Well, it is good enough." It might be good enough for a kid who was raised in a situation where he had all the breaks from the beginning and who bounced out at age 12 or something, but for these kids, who did not have that, it is not good enough. There needs to be an incredible depth of remedial resources available.

It is not whether or not you pick them up; it is what you do with them once you have picked them up, and it is whether or not the resources are there for you even to look that one in the face.

The point I may not have made clearly is that when I was doing front-line protection, the thing that finally drove me from it was saying, "I can remove the child from this abusive situation and put him in this inadequate situation," until he is 18 or falls off the end of that mandate, which is 16 if he does not behave himself. It is 18 if he is good, 21 if he is really smart and can stay in school.

You sort of say, "I think I will leave bad enough alone." When it got to that situation, I said: "I can't sleep nights. I can't do this anymore." I do not think I am the only fairly dedicated social worker who left the field because of that. That means that the people who are making these incredibly difficult decisions are young workers who maybe have not yet burned out, but they also have not yet learned the fine points of making those decisions. Is this an abusive family? Is there incest going on in this family? Is it really adequate for this kid at this time? Those are incredibly difficult decisions. You do not learn them at 25; you do not know them at 25. At 35, if you are really smart and made of cast iron so that you last that long, you have a chance. But we know that the workers do not stay on the front lines. They go on to less greying professional experiences. Until we are willing to make the resources available to interrupt that cycle, we will continue, I think, to do a disservice to these kids.

1720

Mr. McClelland: In the interests of, one, the process, and second, commenting on my own experience, I do not think it is appropriate that we engage in debate. That is not my intent. I understand what you are saying and I think you tried to focus in terms of its being the delivery of service and the type of service that are critical at the point of intervention. I suppose, in a perfect world, with a lot of things, we could provide perfect programs for every individual who comes into the system. I do not like using that terminology.

I just want to be somewhat anecdotal, if I may, for about 30 seconds. I spoke with a friend, a gentleman I work with in my community who was presenting this a while ago—and you will see where I am going with this momentarily, I hope.

I think you said at one point that you see this legislation as—and it may not be precisely a quote—a subtle invasion of the original intent of the legislation, or words to that effect. I would like you to flesh that out a little bit. Apart from your comments—which I understand, and I am not here to challenge you—that we cannot do everything we would like to do and we do not have all the resources we would like to have, a lot of the kids are out there on the street. Some of us have had some experience in that type of work. Currently, people in law enforcement are apprehensive and will not plug them into the system, such as it is, with all its shortcomings. They are missed.

My concern is that when I hear your comment, you are saying that this is eroding the intent of the legislation. I would say to you—and I do not want to debate, as such, but I am concerned about that comment—the intent of it is in fact quite the opposite, and I think the application of it is the opposite. If that is wrong, I want to know about it.

There are kids out there who are not being touched, since the legislation, in its current state, does not provide law enforcement officers a mechanism whereby they can intervene. There are youth bureau officers on the street who know by name, by face, young people who could benefit, we hope. Obviously, we are not going to get every child. I will keep coming back to that, because I do not want to argue that point with you. The very fact that kids go through the program and very many of them end up with success stories in their lives—I have experience that and you have too—tells me that the intent of the legislation is not being eroded; it is being expanded.

I am not here to join in a debate with you. I am just very concerned about that because I feel strongly about that. Again, I understand your reference to the provision of service, but I think it is important for us to understand that we are trying to get—and that one aspect of it certainly is to pick up kids. I do not mean that in the sense of apprehend them but to pick them up into the system, where they are being dropped through the cracks right now.

Ms. Martin: I do not have any problem with kids being picked up. I think they ought to be picked up too. I quite agree with that.

Mr. McClelland: I mean picked up into the system—

Ms. Martin: Yes.

Mr. McClelland: —to facilitate their incorporation into such services as we do have. I think some of them are very good and some of them are very successful in many cases.

Ms. Martin: I would agree that some are. I really do not oppose the ability to pick up a child on the street. My understanding of what is probably happening is that the rights that were there were not utilized to their fullest because of the inadequacies of what happened afterwards.

So you picked the kid up, you took him to his home, you could not really identify what was wrong there, so you said, "Well, I will just return him home," and a week later he is back on your beat again. It is the inadequacies further on that I think maybe encouraged people to not use the fullness of the law that was there. I do not know that for a fact. I am not a policeman and I really am basing that point of view on my experience as a front-line worker, which was not here and was a little while ago. Maybe things have changed, maybe here is better. I am willing to entertain that.

I did think, though, that Mr. Johnston was fairly correct in his response to the tabling of the amendment when he painted the picture about the class factors built into the exercise of police powers under this amendment. You will remember his scenario was that it really differentiates between kids in upper-class communities, who are probably driving home at two in the morning, and kids in the Regent Park and Jane-Finch areas, who do not have the car to drive, or the kids are on the street because home is no place to be. It may be that being on the street is a protective move for some kids.

If you knew the families I know—I deal now with many sexual assault victims. Probably 85 per cent of the girls we deal with are sexual assault victims. Many, many of those girls who are now five and six years post-assault behaviour still have incredible sleep difficulties. They cannot go to sleep at night.

Mr. McClelland: I am not debating that with you and I do not want to get into an exchange or debate; I am just thinking that the intent of it, as I see it, is to pick up some of the numbers who are out there who are not being touched right now and are not being helped who otherwise could be. I see it as a very positive thrust. I just want to make that very clear. I think the glass can be half full as well as half empty. I understand that we are not in the position, and I suppose human nature is such that we never will be—maybe I should not be quite so short-sighted—I am just saying I do not see that we can in one fell swoop address every potential difficulty that people face.

But I see this legislation—I just wanted to come back to that—as also half full, because it is picking up and providing an opportunity to get the mechanisms that we do have, the programs that we do have, some of the help that we do have for a large number of young people who otherwise would not be able to be assisted by the programs we have.

I do not want to get off into a secondary debate, but I just wanted to respond in that fashion and thank you. I appreciate it.

Hon. Mr. Sweeney: I do not know if you are aware of it or not, but Colin Maloney from the Catholic Children's Aid Society of Metropolitan Toronto has been requested by our ministry to do a full review of the other end that you speak of: not just picking the kid up, but then what you do in terms of what children's aid societies and various other agencies are in fact doing for these kids?

I think he would be interested in hearing from you if you have not already been asked to make your input to him, because basically what we have asked him to do is to see how effective we are being when we do take kids into care. Our sense was that too many of the kids who end up on the street are in fact the kids who at one time were in care someplace.

Obviously, we are not doing everything we ought to be doing; I concur with those comments. That is not the purpose of this legislation. It is to help us get at the kids in the first place to see if we can do something with them.

But you make a very apt observation. The quality of what we do afterwards is just as important, but that review is going on right now. I would appreciate, and quite frankly I think he would, your sharing your experiences with him, if you just want to give him a call at the society and have lunch with him or something.

Ms. Martin: His agency is half my boss.

Mr. Allen: I think it is worth observing that one can make the point that the act facilitates apprehending and picking up kids who run away. One can argue, as did the legal section of the children's aid society, that therefore it is a step in the right direction, but they had a lot of other things they wanted to suggest that might happen afterwards, as the minister has just said is necessary.

But if there is some doubt as to whether what happens afterward, in the real situation as we presently have it, is any better for the child—being apprehended, then being sent home, then being sent to care in what is available—then one really can ask the question legitimately whether the amendments with regard to runaways and curfew are in fact an advance. They are not an advance until we are sure of our ground, that the results are in fact better for the kids in terms of where they end up after the apprehension.

I guess I am still disturbed with the lack of really substantial evidence that we have, given the history of repeated runaways. The minister has just said many of them go in care and they run again and they go back home and they run again. In some respects frequently their own sense of where they ought to be, just running away and finding someplace, can sometimes be better than perhaps where they have been or where they are going to end up. Quite frankly, I am having a difficult time getting a good sense of that, whether it really is better or not.

Hon. Mr. Sweeney: The difficulty we face at the present time is that the input from a significant number of agencies—the Pape Adolescent Resource Centre is one that has appeared before us. You will be aware of the fact that there were a number of others that have appeared before this committee. There are a number of others that our ministry works with on an ongoing basis. They have made it very clear to us that, at the present time, it is their belief that a number of kids are slipping through the net who could be apprehended and for whom some service could be provided.

No one, to the best of my knowledge—and I do not know whether Ms. Martin can or not—can ever guarantee the success of the service that you provide. In a number of cases we are very successful—by "we" I mean the ministry and the agencies it works with; in some other cases we are not. It could very well be that, as has already been pointed out, the amount of damage that was done in the first place may be very, very difficult to deal with, and the shortage of resources is a fact; certainly it is. But, clearly, the message we are getting as a ministry is that there are a lot of kids who could be helped who are not being helped at the present time. The legislation does not say that there are not some kids who could be helped who will not be helped even with this legislation.

Our thought is that if we can improve—I will use a baseball term—our batting average, that is better than doing nothing. Essentially what we are being told is that for many of these kids, because they were slipping through the net, we were doing nothing. Now, I do not expect to be the minister when it happens, but I hope some day the batting average will get better and better. I can tell you there are a lot of people working in our ministry and the children's services branch who are working very hard to make that happen. There are a lot of people like Ms. Martin out there who are working very hard to make that happen, and we are going to continue to do so, but I do not expect perfection.

Mr. Allen: I am not doubting that for a minute. Let me just say I appreciate the testimony that you gave on the difficulty of knowing when the family has an appearance of being an abusive family. I do not know whether you read recently—I did—a work by a prominent Canadian artist who told in a very graphic, autobiographical fashion her story of being a sexually abused child, and it would have been very difficult from her account for somebody simply returning a child at the door to have got any impression of what was going on in that household.

I really do wonder whether it is possible. I think the worse a family situation becomes sometimes, the more the repressive mechanisms and the denials that take place build up a kind of fantasy and mode of coping and a style of presenting yourself to outsiders that can be quite convincing. I think as much as anything I have real doubts about the capacity of police officers to return children and identify with any sense of certainty what is happening in that setting. Obviously, we need more resources; I quite understand that. I am just nervous about some aspects of this runaway legislation in the absence of those resources. Anyway, enough said for the moment.

The Vice-Chairman: Thank you, Ms. Martin.

Is Dr. Brian Kennedy here? Dr. Kennedy, please state your name and your affiliation for the record.

Dr. Kennedy: Dr. Brian Kennedy. I am a child and adolescent psychiatrist and I am the director of the Youthdale crisis unit.

The Vice-Chairman: Very good. Would you proceed, please?

Mr. Campbell: It has been brought to our attention that another group wishes to make a presentation. Perhaps at this time, without taking any time away from Dr. Kennedy, we could let these people know whether we are prepared to hear them or not, even extending our time to do so. They are waiting here and they are waiting for an answer. I am just wondering if we could correct that.

The Vice-Chairman: Obviously, we have to have the consent of the committee. If we may have that, then I am certainly prepared to allow them, assuming that we allow Dr. Kennedy adequate time.

Mr. Campbell: Oh, no problem.

The Vice-Chairman: But if there is sufficient time, we would be allowed to hear Mr. and Mrs. Lusher.

Mrs. O'Neill: Madam Chairman, does that mean we are unanimously agreeing to 6:15?

The Vice-Chairman: Again, it would depend on how long Dr. Kennedy takes. Assuming he finished at 5:50, we might have 10 minutes that we could allow the Lushers. Again, we would have to have unanimous consent to sit past six o'clock. Would that be the consensus of the committee? You would be prepared to sit until approximately 6:15, then, if necessary?

Mr. Matrondola: Well, I would have to leave shortly anyway.

The Vice-Chairman: But there is a consensus there?

Agreed to.

The Vice-Chairman: Thank you. Would you proceed, then, Dr. Kennedy?

YOUTHDALE TREATMENT CENTRES LTD.

Dr. Kennedy: Basically, my comments are going to address the amendments for the emergency admissions to secure treatment. In general, I am

in favour of the amendments as they appear. I feel they have come a long way to improving access to admission for adolescents in crisis, and the emergency admission really is for a crisis admission.

I do have some comments about some of the amendments, and I would like to talk a little bit about the types of patients who are admitted and about who makes the decision to admit, mention a little bit about treatment and talk about the 30-day limit.

First of all, the type of patient eligible for admission to the secure crisis program is the chronically disturbed psychiatric adolescent patient. These are the patients who have their first deterioration of an illness in adolescence, or may have an ongoing illness in adolescence and have an acute exacerbation, so the patients who often become chronic into adulthood are a relatively small psychiatric population.

These are the patients who, because of the psychiatric illness they have, have secondary handicaps or have functional disabilities. They are involved in a number of agencies; in fact, they have multi-agency involvement with children's aid. Often different treatment facilities are involved. Some of them are in residential treatment. What happens during the course of treatment is that they occasionally have acute exacerbations. This puts them at risk of suicide or homicide. This is the type of patient we admit into the crisis unit. The new amendment, in particular clause 118(2)(b), has made it easier for these people to gain access because they need treatment and they need security.

The next question is, who makes the decision to admit? Based on the amendment, this decision is made by the administrator, and the administrator is defined as the person in charge of the unit. I have some concerns that this definition is so limited, because this individual is going to be making decisions around the presence or absence of a mental disorder, is going to be making decisions around risk and treatment, but there is no extension around this person's expertise or professional accountability.

Under the Mental Health Act, the person admitting people under these circumstances is a physician. Now, I am not saying it has to be a physician, but I think the administrator should have some clinical expertise and I think that should be identified in the act.

Currently the decision to admit a child to an emergency secure treatment centre is made by a clinician. That is the situation at the Whitby crisis unit and that is the situation at the Youthdale crisis unit. The clinician evaluates the mental disorder, determines the risk and then decides whether or not to admit.

Now, the fundamental need for these patients at this time is twofold: It is the clinical need for treatment and also the need to have their rights properly taken care of, because what happens when a child is admitted to the secure treatment unit is that he loses his freedom. The question then becomes, should the clinician doing the admission have the authority to take away the child's freedom?

1740

My feeling is that should not be the case. I do not think the clinician should have the authority to take away freedom. This is a legal decision, and I think this is the point at which the legal model and the clinical model come

together. I really do not feel it should be too difficult to have legal representation for the child right at the beginnng.

Under the Mental Health Act the situation is different, because the physician makes two decisions, a clinical decision and a legal decision. Under this act, I am suggesting that the physician does not make that decision. I think the physician or the clinician would be able to make the decision for a 24-hour period if a legal representative does not want to get up at 2 o'clock in the morning to do an admission.

It might be acceptable and reasonable to arrange for the legal representative to be involved the following day, but I feel that legal representative should be very closely involved with the multidisciplinary treatment team that is taking care of the child over time. Who should this person be? I do not know. It could be an attorney, a judge or maybe a justice of the peace with special training.

If this cannot be arranged, then I feel the amendments outlined in the bill should become law. Based on the old legislation, where one would have court appearances after a couple or five days, this would be excessively burdensome and actually completely unworkable in a crisis unit, where you have six or seven admissions a week.

I would like to move on now and talk a little bit about another part of the legislation, in relation to consent to treatment. I feel that this act in particular does not address this sufficiently well. For a child under the age of 16, the person who would give his consent for treatment for that child would be the legal guardian. Over the age of 16, the child himself or herself will give consent. The problem becomes tricky if the child is incompetent over the age of 16, and there does not seem to be any clear outline in the act for substitute consent, as there is under the Mental Health Act.

In conclusion, I would like to address the 30-day detention issue. In general, I feel that the 30-day limit is good and in most cases ideal, because most adolescents are out of the crisis unit within 10 to 14 days. However, during the year we have some adolescents whom we cannot discharge after 30 days. That situation is because these kids are usually psychotic or delusional. We have stabilized the crisis, but because of the fact that they are insufficiently rehabilitated, to send them back to the environment they came from would predispose them, very quickly, to readmission to the crisis unit.

What we do in these cases is arrange admission to one of the medium rehabilitation units in the city, such as at Sunnybrook Hospital or the Hincks Treatment Centre or the Hospital for Sick Children. The problem becomes, of course, that we have to wait for a bed. Sometimes it takes a month and a half before we can get the transfer. Usually we can organize it within a month and a half without too much difficulty.

I feel that an absolute cutoff of 30 days would make this particular population vulnerable. It is a small number of adolescents; we have had only about eight or nine in the past year. It might be possible to have a review done by the Child and Family Services Review Board in these circumstances.

That is my presentation. Thank you for the opportunity to present it.

The Vice-Chairman: Thank you very much, Dr. Kennedy.

Mrs. O'Neill: I wonder if you would say a little bit more about this area of substitute consent.

Dr. Kennedy: For a child 16 or over, if that child is admitted by us and we find that the child is incompetent to consent to treatment, the question then becomes, whom do we turn to to give us permission to treat?

Under the Mental Health Act there are really two things that can happen: When the child is competent, he can assign a representative to speak on his behalf concerning treatment before he becomes incompetent. If he becomes incompetent and does not have a person to speak for him, there are a number of substitutes we can go to, family members, parents, etc.

Mrs. O'Neill: I was trying to fit it into this act. As I understand this act, it is for 16 years old and under. I was trying to see if you were saying that your concern was about those people who became 16 years old in this situation.

Dr. Kennedy: No, the secure treatment amendments apply to 18 years old and under.

Hon. Mr. Sweeney: Can I make a point? The runaway and curfew provisions are for under age 16. Secure treatment is for up to age 18.

Mrs. O'Neill: OK, sorry.

Mrs. Cunningham: Then what would be your suggestion, specifically, to the amendment, following through with the previous line of questioning? What do you want us—

Dr. Kennedy: As far as consent is concerned?

Mrs. Cunningham: What do you want us to consider?

Dr. Kennedy: We have been working under the Mental Health Act for the past year. We have had situations where we had to use it under these circumstances and it worked very well.

Hon. Mr. Sweeney: Can I make an observation? I think the questioning may be going in an unnecessary direction. As you know, this is an amendment to the act. There are many sections of the act which are not being changed.

Subsection 4(3) of the act says: "A person's nearest relative may give or revoke a consent or participate in or terminate an agreement on the person's behalf if it has been determined on the basis of an assessment...that the person does not have capacity." That is in the act. Therefore, it does not have to be in this bill. I do not know whether that is enough, but it is there.

Dr. Kennedy: And that would apply to people over the age of 16?

Hon. Mr. Sweeney: Yes.

Dr. Kennedy: It could be. I have to—

Hon. Mr. Sweeney: The difficulty, whenever you are dealing with a bill which is an amendment to the act, is that you do not have the whole act to look at. One of my staff drew that to my attention, so I can suggest to you that it is already in the act, which applies.

Mr. Allen: I would like to ask you about your suggestion with regard to the presence of a clinician and somebody in a legal capacity with respect to emergency admission. Is that suggestion one you would have made with respect to the previous legislation, the act as it presently exists? Or does it arise out of the fact that the grounds for emergency admission have now been expanded so that they get into the somewhat more subjective, nonlegal area of a person's having made a threat of some kind but not in fact having committed an offence and that, therefore, there is need both for more adequate medical evaluation and for a more specific legal presence to cover the situation?

Dr. Kennedy: It is hard to answer that, because I think a lot of things have changed over the last couple of years in relation to rights. Our knowledge has expanded more. As well as that, various legal situations have become more complex. I probably would not have advocated it prior to the amendments, based on my reading of the literature following the Mental Health Act. It is not because of the amendments here. I think if I had had the knowledge I have now in relation to rights and the complexities of the legal system, I would have advocated it before.

Mr. Allen: Thank you very much.

Mrs. O'Neill: Doctor, you did say you had eight or nine patients during the last year who would have needed longer than 30 days. Do you feel that would be critical enough to have an amendment put in the bill: three 15-day periods, for instance, instead of two 15-day periods, or one 15-day period renewable twice, or something along these lines?

1750

Dr. Kennedy: I think it is critical enough to put an amendment in to extend the time. The question is how long. Looking at the patients we had, we were looking at an average of about six to seven weeks. So I think one extension of about two weeks should do it.

I do not know whether it is asking for too much flexibility, but I think if a review was made of the case, where an independent group could take a look at the situation and see that we can get the child admitted into Sunnybrook two weeks or three weeks after the 30 days, that independent review should have the flexibility to say: "Yes. Let's keep him here until we transfer him because it's too risky to send him home."

Mrs. O'Neill: Is this 30 days strictly tied to beds, and not to the number of people who must be consulted or the diagnosis that has to be done? We did have a representation yesterday that said the 30 days was absolutely necessary because of the number of people involved with these kinds of patients, all the different agencies. But yours is coming from an entirely different perspective, that of the need to follow up treatment.

Dr. Kennedy: This is for continuity of treatment and moving from a crisis situation that is now stabilized into a medium-stay, outpatient rehabilitation clinic, similar to the one they have in Sunnybrook or at the Hospital for Sick Children.

Mrs. O'Neill: So the outpatients still need to go on waiting lists, even if they are not going to be admitted?

Dr. Kennedy: No. A situation like that would not be as critical. If

the child could become involved in an outpatient facility, it would be easier in most cases for the facility to handle the discharge. In fact, sometimes we can provide some outpatient services ourselves. I am talking about the type of child who needs a fair amount of support because he still has not dealt with the functional disabilities around managing his normal, natural environment and he still needs the structure of a longer stay.

Mr. McClelland: This is perhaps a two-sided question. I do not know where to go first, but to pick up on this issue of 30 days: under the scheme of the amendment, as I understand it, we have a process for admission, 30 days without a court order. Within a 24-hour period, an advocate gets involved into the system on behalf of the admitted individual. I suppose I want to go to the minister and then see if we get some interplay here.

Minister, you have a 30-day period. In the contemplation of the drafting of the amendment, I am wondering if you looked at a possibility for an extension, or if you contemplated that the introduction of an advocate on behalf of the child would provide a mechanism whereby that main fact, that 30-day treatment period, may be extended. If not, is there some way we can bring those two concepts together, to perhaps reword the question of—

Hon. Mr. Sweeney: Let me speak to the 30 days, because the number was not picked out of the air. As Dr. Kennedy probably knows, the existing legislation allows a court to make a decision to put a child into secure treatment for up to 180 days, six months. That is there. We checked with the four—I believe there are only four—treatment centres in the province: your own, Whitby Psychiatric Hospital, Syl Apps Youth Centre, Roberts/Smart Centre in Ottawa. Those are the only four that deal with this particular client group.

The feedback we got was that for emergency short-term admissions of the type we are talking about in this piece of legislation, three weeks was the average time needed for actual treatment. Then it was pointed out to us, as one of our colleagues has already indicated, that because of the special needs of these kids after treatment is finished, they ask, "Would you give us about another week to be sure that we've properly placed the child after we've provided the service we can?"

We were talking about 28 to 30 days. That is all this amendment is intended to deal with, that particular type of situation. If the needs of the child are beyond 30 days, the existing legislation triggers in. Anything over 30 days is, in our judgement and in the judgement of the four treatment centres we spoke to, long term. Anybody can quibble about: "What's the difference between 30 days and 32 days?" You could go on to 36 days, 48 days and 55 days. I think you see where I am getting to. Therefore, a clear point of demarcation was decided upon—up to 30 days, crisis, short term, no courts. Anything beyond that is long term. You go through the court procedure and you build in all the protections. That was the reasoning for the time. As I say, the sense we got from the four centres we spoke to was that they said that was the best way to go.

With respect to the advocate, again without the court protection for the longer term, the decision was made that within 24 hours both the office of child and family service advocacy, which is a function of this ministry, and the office of the official guardian, which is a function of the Attorney General's ministry, must be notified and they have to trigger in.

The advocate has to make himself or herself or one of his or her staff available to the child as soon as possible. We have checked and they said they

can do it within hours. The official guardian must guarantee himself that legal services are available to the child within a five-day period. If they are not within that five-day period, then he himself sees to it that it is there.

There are really two different functions, two different purposes. They do not serve the same end. Therefore, I am a little reluctant to try to have them serve the same purpose because they are never intended to. In terms of having a legal admission component, quite frankly, I suggest to you that the built-in protections within the 24 hours and within the five days come as close as we can get to serve the same purpose. You may not agree, but that is the intent.

Mr. Campbell: Madam Chairman, this might be a good time to consider a motion for going past six o'clock since we are looking at the previous question.

The Vice-Chairman: It was my understanding that we did have unanimous consent to proceed until 6:15 p.m.

Mr. Campbell: OK. I just wanted to make sure there had been a motion because I had not seen one.

The Vice-Chairman: Did you wish to make a motion?

Mr. Campbell: I will make a motion that we proceed to 6:15 p.m.

Motion agreed to.

The Vice-Chairman: Did you have a reply? I would just ask out of courtesy to our next group that we not allow this to go on too long. Thank you.

Dr. Kennedy: Just to address the 30-day issue again very quickly, I think the average length of stay in the crisis unit over the past year at Youthdale was 12 days. The range was up to 42 days.

The issue becomes what do we do with these patients, this small group? The minute they are admitted, we can identify them. The day they are admitted, we can make a referral. It is possible to go through the process after the 30 days or during it and apply for long-term secure treatment, but I do not think it is necessary. In a situation like this, for such a small number of people, I really do not think it should be that difficult to build something into the legislation.

Hon. Mr. Sweeney: It is a judgement call as to where to cut off these. All I can say to you is that your colleagues at all four centres said that if you have to make a judgement call, that is the best one. You will have to speak to them.

The Vice-Chairman: On that note, Dr. Kennedy, thank you very much for joining us today.

Would Mr. Silver and Mrs. Lusher please come forward?

Mrs. Lusher: I am very pleased I can talk here.

The Vice-Chairman: Again, I would ask you, Mrs. Lusher, to please identify your name and the affiliation of your group. I would remind you that

we cannot sit any longer than 6:15 p.m.

HERITAGE OF CHILDREN

Mrs. Lusher: Right. My name is Sylvia Lusher. My brother is my associate Abraham Silver. We started Heritage of Children three years ago. Mr. Sweeney was notified. He has lots of information, as well as Mr. Scott and everyone involved with children. We have got information from all kinds of grandparents.

I have not heard anything here today about grandparents being involved with kids and it is really a pity. There are a lot of children out on the streets. I have had submissions on that from different people. There are about 10,000 who are registered missing. There are another 10,000 who are not registered. In some cases, some parents do not want to report it because they will lose the baby bonus. They will lose all kinds of things that are coming to them.

I think children should have an extended family. You would not have so many crimes, so many drugs if children would know they have someone there waiting for them. There are relatives—aunts, uncles, grandparents and cousins—who would be more than willing to accept children who have been abused physically, mentally and emotionally.

1800

We can show you lots of information. I do not have the time. I did not bring the information with me, but Mr. Sweeney has some of it. He also answered me in a letter. I suggested to him that parents who are working and have money should support their children who are out on the streets and on welfare and getting support from the government. They should support their own children and not throw them on our shoulders. He agreed with me. He told me he would give it to his committee and suggest that to it.

I think that if grandparents are there and family is there, we would not have all of this on the streets. I am more than sure. I can give you so many things. I have one grandmother in Orillia who cried. She called me Monday. She has been with me since we started the organization. Her son has been divorced. He has had three nervous breakdowns. The child was being abused by the mother, who had a boyfriend. The boyfriend admitted to the police he sexually abused the child. The grandmother called the children's aid society. They took the child out of the home and put her into a foster home. The grandmother cannot see this child. I think that is a shame, because she actually raised her. She has seen her all her life. Last week she lost her son. He passed away. She is not just losing her son; she is losing her granddaughter as well. That is just one in a million.

We have people calling from as far away as Calgary. I have made submissions to the Prime Minister. The Premier (Mr. Peterson) knows; everyone knows. We are in the Legislature every day. You have seen me there. We are trying to see that something happens. The Minister of Community and Social Services (Mr. Sweeney) has a very good bill, and we appreciate that. The member for Markham (Mr. Cousens) has also made a bill that we brought to the Legislature last June and all the members got copies in big envelopes containing information. Mr. Cousens made a bill, Bill 45, on grandparents' rights and the heritage of children.

If this country wants to stay strong, it has to have the children know

who they are. We have to back them, not leave them roaming on the streets, not going to welfare, not going into institutions. Look to the family. It is very important. What else can I say?

The Vice-Chairman: Thank you very much. You speak very poignantly to the issue. I am sure it is a view that is shared by many. As you are perhaps aware at this point in time, if a parent decides not to permit the rights to go to the grandparents, that is where the problem arises, obviously.

Mrs. Lusher: This is what we want to bring out in the law.

The Vice-Chairman: Yes.

Mrs. Lusher: As a matter of fact, the Attorney General (Mr. Scott) has made Bill 124. We have statements that we have given him and we have drafted a bill, which he has taken notice of, that grandparents should be noted as a parent.

The Vice-Chairman: Yes. I appreciate your concern. This particular bill is not speaking to that specific issue, but at this point, if there are members who would like to address some questions to you, we could certainly entertain them.

Mr. Matrondola: I would like to say that even though what Mrs. Lusher is saying may not be relevant to this bill, I think this committee would not be dealing with the matter fairly and would be remiss if it did not take into account the comments she made, because with all due respect, previous presenters added their comments. As far as I am concerned, it is well taken and there is a good point there, something that we should take into consideration, if not in this amendment, in future amendments.

Mr. Campbell: I think, just to answer those concerns, number one is that we moved to have the presenters, Mrs. Lusher and Mr. Silver, to be in front of us to hear what they had to say. I think that is an important part of what we do in this committee's work so that they have an opportunity. We stayed overtime to hear them. I think it is important that their comments have been heard and recorded in Hansard.

Mrs. Lusher: One thing that I say is, please do not put the kids into foster homes. Mr. Sweeney, please look for relatives. It is very important for the children.

Mr. Allen: There are of course various useful alternative ways of responding. My own office has been working for some time with a grandparent. Notwithstanding what you said about parents having some right to indicate whether they do or do not want children to go to or be in the custody of grandparents, none the less, there do arise situations where children, notwithstanding a natural parent's right in a remarriage situation or whatever, do end up wanting and needing access to grandparents. If the natural parent in question is intimidated by the new spouse or the new situation, the relationship may dwindle and weaken and get more and more distant, notwithstanding, often, a very healthy role that the grandparent could be playing.

We have had some contact with the office of the Attorney General. I understand he is trying to work through some amendment, some piece of legislation at least, that would address that question. I hope it can be matured reasonably soon, but I am not immediately sure of just what stage it is at.

Mrs. Lusher: Yes, that is the bill. It is Bill 124. It had one reading. It should be coming up shortly.

Mr. Allen: Yes, I understand, but it is active. It is not something that is just totally dormant.

Mrs. Lusher: Right.

Mr. Allen: There is some hope there, but I think the point that relates to our concern is that children who are runaways and who may have found safe refuge with a grandparent or an uncle, as we were told, at least by one presenter, might well find the police intervening on a parental warrant to bring them back home. They might as well perhaps have a little stay with the grandparents and get settled down there, if that is a healthy and good place for them to be.

Mrs. Lusher: You would be surprised. They will not go on the streets if they have some support. Children need love and they are looking for it out on the street, and that is very wrong.

The Vice-Chairman: Mrs. Lusher, thank you very much for bringing this forth. I am sure each member in his or her own way will take this into consideration. Thank you for coming forward.

Mrs. Lusher: Thank you very much.

The Vice-Chairman: I would just like to ask Dr. Allen and Mrs. Cunningham, if they have any amendments, to please bring them forward to the clerk so that they can be taken into consideration.

We will be adjourning until Thursday following routine proceedings, which will be approximately 3:30 p.m. At that time, we will begin the clause-by-clause consideration of Bill 107.

I would like to thank all of the presenters for their briefs today. That will be all for today. Thank you.

The committee adjourned at 6:07 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILD AND FAMILY SERVICES AMENDMENT ACT

THURSDAY, JUNE 9, 1988

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Gardner, Dr. Robert J. L., Assistant Chief, Legislative Research Service

Witnesses:

From the Ministry of Community and Social Services:

Sweeney, Hon. John, Minister of Community and Social Services
(Kitchener-Wilmot L)

Morin, Gilles E., Parliamentary Assistant to the Minister of Community and
Social Services (Carleton East L)

Sheffield, Anne, Manager, Children's Services

Walker, Andrea J., Director, Legal Services Branch

Individual Presentation:

Leeson, Elizabeth

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, June 9, 1988

The committee met at 4:20 p.m. in room 151.

Mr. Chairman: We are here for clause-by-clause consideration of Bill 107, but I have a few housekeeping items before we begin.

As the committee knows, next week we consider Bill 109 and Bill 100 clause by clause. With respect to Bill 109 first, I believe everyone has now received the sort of compilation produced by the Ontario Secondary School Trustees' Association. It was sent to your offices. It is their summary of the bill and suggestions they have for it. I will assume everyone has that. If you care to take a copy from here, feel free to do so.

Secondly, the report from our research officer Bob Gardner is now available and I think you have it on your desks. I will ask Bob to speak very briefly to that.

Dr. Gardner: We have distributed the document to the members who were on Bill 109. I should explain what we intend with these summaries. They are very much working documents to aid the members in their clause-by-clause deliberation. They are not a historical record of everything the committee heard. They are not a compilation that is comprehensive. We have tried to highlight the key concerns and recommendations made by the groups that appeared before you.

The first part of this summary is on general concerns and recommendations on constitutional issues, education finance and various other things. The greater part of the summary is on specific sections of the bill, what the various groups said about them and what they wanted changed. We have tried to do that as concisely as possibly.

You will notice acronyms at the end of each concern or recommendation. That refers to the group and the list of groups and their initials are at the front.

Mr. Chairman: Thank you, Bob. We appreciate that. That report is for Monday's work, Bill 109. I assume that members will bring the OSSTA brief with them at the same time.

Mrs. O'Neill: Is that the OSSTA Carleton unit?

Mr. Chairman: This thing here.

Mr. McGuinty: I commend Dr. Gardner for the magnificent job he has done with making this abstract of all of these materials we have had. I think it is invaluable and it is up to the usual high-quality standard of work he has always done. Thank you, Bob.

Dr. Gardner: Thank you, Mr. McGuinty. It was not done just by myself but by Ann Porter of the legislative research service as well.

Mr. Chairman: We appreciate it. Thank you. If I could return to today's bill, we asked Inspector Dennis for some statistics. I think all

members have received the memorandum from the clerk about those statistics. It is indicated that the police are not at liberty to release those statistics to us. They are apparently federal and are being paid for by the federal government. It suggests the committee try and obtain them from the Department of Justice. Can I assume the committee wishes us to formally write and request those statistics?

Mr. R. F. Johnston: Right.

Mr. Chairman: Done. I would ask members for any amendments they have for Bill 109 or Bill 100. The last item I have is that Mrs. Leeson is here. She is sitting in the front row. She is interested in making what she says is a very short presentation to this committee. I ask the committee for unanimous consent to hear Mrs. Leeson briefly.

Interjection.

Mr. Chairman: It is on Bill 107, she says.

Mr. R. F. Johnston: I presume it is on matters that she has raised with us before and members who have not heard their concerns should hear them. But I am not sure.

Mr. Campbell: Six o'clock is fast approaching. Could we perhaps set a time limit—10 minutes or 15 minutes or whatever—just so that we know?

Mr. Chairman: Mrs. Leeson, as I mentioned to you before, if we could keep it to five or 10 minutes; this is not to be awkward. It is simply because we are here for a very particular purpose today. Would you like to come forward and sit at the microphone here? I will keep the time. I will not interrupt you if I can help it.

Mrs. Leeson: I will take only a few minutes.

Mr. Chairman: Yes. Before you begin, would you state your name and any affiliation you might have?

ELIZABETH LEESON

Mrs. Leeson: My name is Elizabeth Leeson. I am the grandmother of two surviving grandchildren whose mother is dead. Their little brother is also dead. They are the only relatives I have in the world and I am the only maternal relative they have. My greatest concern is for my granddaughter, who will be 16 at the end of July. I have not had contact with the children because their father has defied two access orders, the last one handed down by Judge Allen in Brampton provincial court on October 9, 1985. They have moved, I understand, to Aurora.

My granddaughter is aware that she is unwanted by the stepmother. The father and stepmother have taken her down to a house to allow her to go to school until the end of term. Then she is going to work in a restaurant kitchen in Aurora. This little girl, I understand, is a highly intelligent child, not street-wise, a gentle little girl. Her mathematical marks are in the high 90s. Her other marks in school are equivalent. She speaks fluent German, not her native tongue, and the semi-illiterate father and the stepmother have decided that this will be the child's future, in this restaurant kitchen, which I consider absolutely abusive to this little girl.

She is afraid. I did see her for half an hour last week under the supervision of a lady who did it without the father's knowledge. Her emotions are so disturbed. She does not know whether she is on her head or her heels. Her little brother will be nine this month, on June 21. I have not seen him either. He has been stealing. He has been playing truant from school. He is defiant and his father has taken him out to have his ears pierced because the father thinks it is macho.

Where will these children run from the home they are in now, where they are surrounded by the stepmother, two stepchildren, a huge extended family that belongs to the other family? My children have nowhere to go. Please listen. I get told repeatedly, "Get a lawyer." I have had seven lawyers and none of them has done one thing. Please help me. Thank you very much.

Mr. Chairman: Thank you, Mrs. Leeson.

CHILD AND FAMILY SERVICES AMENDMENT ACT
(continued)

Consideration of Bill 107, An Act to amend the Child and Family Services Act, 1984.

Mr. Chairman: Let us proceed to Bill 107. I have notice of a government amendment to section 2, clause 40c(1)(a). Is there any discussion? Are there any amendments for the sections preceding that?

Mr. R. F. Johnston: No amendments.

Hon. Mr. Sweeney: I would like a point of information, if I may.

Mr. Chairman: Could I deal with the sections before that?

Hon. Mr. Sweeney: Yes.

Mr. Campbell: I would be pleased to move that motion, if you like.

Mr. R. F. Johnston: We wish to go section by section, before he gets to a number of the sections.

Mr. Campbell: OK.

Mr. Chairman: I will call section 1. Any discussion? Any amendment to section 1?

Mr. Allen: No.

1630

Mr. Chairman: Shall section 1 carry?

Mr. Allen: No.

Mr. R. F. Johnston: We want to vote.

Mr. Chairman: OK.

Mr. R. F. Johnston: Do you not understand how this works?

Mr. Chairman: OK. Does someone move section 1 or do I just call it?

Clerk of the Committee: You just call it.

Mr. R. F. Johnston: I will tell you if I want it recorded. Do not worry.

Mr. Chairman: OK.

Those in favour? Against?

Section 1 agreed to.

Section 2:

Mr. Chairman: Mr. Campbell moves that clause 40c(1)(a) of the act, as set out in section 2 of the bill, be struck out and the following substituted therefor:

"(a) an approved agency that has custody of the child."

Hon. Mr. Sweeney: May I briefly explain? The original wording was that "'parent' includes" and then the section reads "a person, other than an individual, that has custody of the child."

It was brought to our attention that although that wording is accurate, it is difficult to understand without reference to other sections of the act or even other acts. Therefore, we have changed the wording to say basically what it means, "an approved agency," as opposed to trying to continue with this convoluted wording. It was changed to make the language clearer and to be able to stand on its own rather than having to refer to other sections.

Mr. R. F. Johnston: Mr. Chairman, if I might, just on a procedural matter here: you seem to wish to vote on entire sections when we are doing clause-by-clause discussion of this particular piece of legislation. I would prefer that we deal with clause by clause—in other words, subsections—and not necessarily presume that we are going to move on to deal with an entire section, as we just did with section 1.

Mr. Chairman: So in this case, for example, would you prefer we go to section 40a and 40b before we get to this section 40c that we are in? Would that be sufficient detail?

Mr. R. F. Johnston: That would be sufficient for this section.

Mr. Chairman: OK. I would be grateful if you could indicate, Richard, when we get to various sections as to the length.

Could we consider section 40a first then? Is there any discussion of section 40a? Would you prefer we vote on each of these sections?

Mr. R. F. Johnston: Right.

Mr. Chairman: OK. Those in favour of section 40a? Against? Carried.

I call section 40b. Any discussion on section 40b? Those in favour? Those against? It is carried, six to two.

That brings us to section 40c, and we have the amendment that was moved by Mr. Campbell. Is there any discussion of that amendment? Those in favour of the amendment? Those against?

Motion agreed to.

Mr. Chairman: I call the section as amended. Those in favour of section 40c, as amended? Those against?

I call section 40d. Any discussion? Those in favour of section 40d? Those against?

Shall section 2, as amended, carry? Those in favour? Against? Six to two.

Section 2, as amended, agreed to.

Sections 3 through 5, inclusive, agreed to.

Mr. Chairman: I have notice of an amendment, a new section. Would someone care to move that?

Mr. McClelland moves that the bill be amended by adding thereto the following section: "5a. Subsection 74(2) of the said act is amended by inserting after '40' in the second line 'or 40d.'"

Is there any discussion or explanation?

Hon. Mr. Sweeney: Very briefly, this was an oversight on our part that was drawn to our attention. It permits the police or a child protection worker to place a homemaker in the home of the child, thereby avoiding taking the child out of the home. It was intended that should be in there. It was an oversight and we are correcting that oversight.

Section 5a agreed to.

Section 6:

Mr. R. F. Johnston: This is the section of the act which deals with the whole question of curfews, with arbitrary hours of special powers for the police and other child protection agencies rather than dealing with the issue of actual jeopardy to the child, which is the fundamental principle upon which the protection sections of the Child and Family Services Act are based.

When we first discussed this a number of years ago, some of us tried to suggest that this particular clause, which states that a child under 16 cannot loiter after midnight or be in a place of entertainment etc., after that time, was, in part, ignoring the realities of city life. In part, it was something which could be used against certain classes of people, children in this case, in ways which would be prejudicial and which in fact ignored the underlying principle, which is that you have to have some demonstration that a child is in need of protection and at substantial risk before action can be undertaken.

While I think most people on the committee at that time understood that the very notion that a child is in a certain place at a certain hour does not mean the child is in need of protection, they decided to keep this particular anachronism in the act.

I argued in the House at second reading, and I still hold, that the same

kind of protections that we would want to have for a child who may be on the prostitution track in Toronto at five o'clock in the afternoon apply to the child who may be in the same district after midnight. We do not seem to need a loitering section in here for a child who may be participating in prostitution at other hours, after school, before going home; but we do think it is unnecessary to say that a child who may be coming out of a rock concert and may be in the company of somebody older than himself, perhaps, or may be alone is necessarily in need in protection. I find that, in this day and age, an anachronism.

1640

I also want to remind members who may not have paid much attention to what has happened in a city like Toronto over the last number of years that members of our black community in particular, in places like Regent Park and Alexandra Park, have had consistent difficulties with police officers around being picked up for loitering, whereas kids in Forest Hill do not seem to have that difficulty, strangely. I have a great concern that this kind of use of legislation is very much a class-biased section and will be used primarily against visible minorities in poor districts as a means of getting kids off the streets and will have nothing to do with whether or not they are in actual need of protection.

I just want to say to members of this committee that I understand the need to protect young people who may be victimized, especially in the very vicious kind of street scene that we have in a place like Toronto at the moment, but the hour has nothing to do with it. This is an inappropriate section, and I would encourage you to vote against it, as I would.

Mr. Chairman: Any more discussion on section 6?

Hon. Mr. Sweeney: Can I comment very briefly? As Mr. Johnston has pointed out, the discussion he just described did take place when the original act was being drafted, and I remember sitting in on that discussion. The decision was made at that time that a curfew would be left in, because it was brought to our attention that while some—let's face it, the main purpose of this is to get young kids out of the clutches of the pimps, mostly in a place like downtown Toronto. While there is no doubt that some of that activity takes place during the day, the evidence seems to suggest that the bulk of it takes place in the early hours of the morning and that it is much more obvious at that time. You do not have a very large number of people milling around the street. That may not be a good rationale for legislation. It just happens to be a fact of life. That is the reality of it.

The amendment of the original act does not change the basic curfew principle. It changes only the fact that the responsible adult who is with the child must have the approval of the parents, because child care workers and peace officers have drawn to our attention that the section that was in there was unworkable, just by saying, "responsible adult." There appeared to be some difficulty in identifying whether the adult was responsible or not.

Mr. Johnston's comments have validity, but I would point out that both in the original legislation and now there is a strong body of opinion that a curfew serves a useful purpose. I would certainly hope that his reference to class bias is not the norm, and that certainly is not the intent of this legislation. It is simply to try to get young girls in particular out of the clutches of pimps in places like downtown Toronto. We have been advised that this is a useful legislative vehicle to do that and, as such, we believe it should remain in.

Mr. R. F. Johnston: There are two points I would like to make. The first is that whereas it may be the case that there are under-16s on the streets after midnight in the prostitution trade, both male and female, it is also the case that a lot of the activity is from after school through the evening hours. In fact, you just have to talk to people in youth services in Metro to understand that there are a lot of kids from Scarborough and other suburbs who actually come downtown, are involved for a few hours and then go back home on a regular basis.

My argument for getting rid of this is that, unlike other parts of the bill which have not been put before us to deal with, this has been put before us again. Now is our chance to get rid of this offensive section, and we should do that.

Why do we need this? If we feel we have the powers to deal with these kids at five o'clock and six o'clock and eight o'clock and 10 o'clock and 11 o'clock and 11:45 under the present legislation without mentioning those hours, why have we bothered to put in this notion of a curfew? If we do not feel we have the powers and we need some kind of hour, then let's recognize the reality of the streets in Toronto and say we are going to put it in from four o'clock in the afternoon, when they get out of school and are then down working the streets, with their pimps or without. There is no logic to this point of view that we need the curfew.

The other thing I would say about the addition that has been brought in is that whereas I agree it probably was difficult to determine the authority by which somebody was responsible for a child under subsection 5 in the old act—which says "unless accompanied by the person or by an individual 18 years of age or older who is appointed by the person," which refers back to the parent or the society or agency—what we have here is this notion, which is equally open to abuse, of people being harassed at that hour because they may not look like decent, upstanding, middle-class people.

An example I used in the House and will use again here is a long-haired, ear-ringed uncle of a 15-year-old. That person is much more likely to be approached by the police and asked for proof that he is in fact a specified individual who has been authorized by the parent than I am if I am downtown at the same time—well, maybe not me, but Mr. Allen—

Mr. Campbell: Better example.

Mr. R. F. Johnston: —if he is downtown with his niece or nephew on the same street, just across the road.

Everybody knows, if you read the sociology of crime and the way enforcement is undertaken, that that long-haired person is much more likely to be approached, and if he does not have proof on him of that specified authorization, then everything else that follows from this in terms of the interventions of the state and the police follows.

I am not sure that deals with the issue at hand in all of this. Again, I understand how neat curfews are and how they all tie into sort of ancient notions of truancy, and they certainly play a large part in military and police states around the world in terms of how enforcement is undertaken. But when you look at this act, to which a huge amount of thought was given from Dick Barnhorst's committee on forward, it is the one piece that does not fit with the definition of moving on the need for protection, of the "substantial risk to the child" definition and having everything flow from that. Instead,

it just says if you are there and it is that time, then ipso facto action can be taken.

I suggest to you that if you look back at the times, it was 10 o'clock in the old act. As we went through the act, they moved it to nine o'clock. Then we had our own debate about this as we were doing this act before, and the compromise was midnight, because that seemed more realistic in today's society. None of it has any rational connection with the philosophy of this bill.

Mr. Chairman: Any other discussion of section 6? Those in favour of section 6? Those against?

Section 6 agreed to.

Section 7:

Mr. Chairman: I call section 7. Any discussion? Those in favour of section 7? Those against? It is six to two.

Section 7 agreed to.

Section 8:

Mr. Chairman: I call section 8. Any discussion? Those in favour of section 8? Six. Those against? Two, I guess.

Section 8 agreed to.

1650

Section 9:

Mr. Chairman: The clerk has suggested I call subsection 9(1). I do so. Discussion? Those in favour? Six. Those against? Two. Carried.

I call subsection 9(2). Those in favour? Six. Those against? Two. Carried.

The clerk has now suggested I call section 9, including all those subsections. Those in favour? Six. Those against? Two.

Section 9 agreed to.

Section 10:

Mr. Chairman: I call subsection 10(1). Discussion? Those in favour? Six. Those against? Two. Carried.

Subsection 10(2). Discussion? Those in favour? Six. Against? Two. Carried.

Subsection 10(3). Discussion? Those in favour? Six. Against? One. Carried.

I call section 10. Those in favour? Six. Those against? Two.

Section 10 agreed to.

Section 11:

Mr. R. F. Johnston: This starts into the whole question of the elimination of the 180-day figures. I wonder if, before we go too far with this, the—

Hon. Mr. Sweeney: Can I just make a comment there? The 180-day figure is for long-term treatment. That section remains in the act. The new section is the 30-day short-term section. We are not taking 180 out. We are adding a new short-term section dealing with 30 days.

Mr. R. F. Johnston: I will wait until we get to subsection 13(2), then, because it seems to me that that deals with 60 days, etc., which seems to be a change from the present act. Is it not? Am I incorrect about that?

Hon. Mr. Sweeney: No. If I can clarify again, under the existing act there is the court-ordered maximum 180 days, period. Under this amendment, we are leaving that in, but we are putting in a new section whereby you can have an admission to a secure treatment centre for up to 30 days without the court order and all those other protections built in. But the long-term court-ordered up to 180 days stays; it does not change. There has been a new section added on just for short-term admissions.

Mr. Chairman: Any further discussion of section 11? Those in favour of section 11? Six. Against? One? OK.

Section 11 agreed to.

Section 12:

Mr. Chairman: I call section 12. Discussion? Those in favour? Six.

Section 12 agreed to.

Mr. Chairman: Section 13, discussion? Those in favour? Those against?

Section 13 agreed to.

Section 14:

Mr. Chairman: I have notice of a government amendment for clause 14(1a)(c). I call the parts of section 14 preceding that, that is to say clauses 14(1a)(a) and (b). Would that be appropriate? I call clause 14(1a)(a) and (b). Any discussion? Those in favour? Carried.

I have notice of a government amendment.

Mrs. LeBourdais moves that clause 116(1a)(c) of the act, as set out in subsection 14(1) of the bill, be struck out and the following substituted therefor:

"(c) a physician, with the written consent of the administrator and the person; or."

Hon. Mr. Sweeney: It was drawn to our attention during these hearings that there was an inconsistency with respect to getting the consent of the person, the child about to be a young adult, with respect to extending the long-term treatment.

We accept the argument that it is inconsistent and it is improper for a person who is going to be 18 years old while this extension is being carried out. We are therefore adding to the existing legislation the words "and the person," which means that the consent of the young person must be obtained as well.

Mr. R. F. Johnston: It is a very positive change, which we support.

Motion agreed to.

Mr. Chairman: For completion, I will call clause 14(1)(d) and the section thereafter. Discussion? Those in favour? Against? Carried.

I call subsection 14(1), as amended. Subsection (1a) up to subsection (2). OK. Those in favour? Carried.

I call subsection 14(2). Any discussion? Those in favour? Against?

It has been suggested that I call all of section 14, as amended. Those in favour?

Section 14, as amended, agreed to.

Section 15:

Mr. Chairman: I call section 117a of the act as set out in section 15 of the bill.

Mr. R. F. Johnston: Subsection 117a(4) says: "In making an order under subsection (3), the court shall consider whether there is an appropriate plan for the child's care on release from the secure treatment program."

I am concerned about it only because I would like to hear more from the ministry in terms of its notions of what might occur if the court found that in fact the agency involved had not made appropriate plans for the care of the child upon release.

Does that mean that the child would automatically remain in that secure treatment facility as a result of that? Is that a methodology which could be used in fact by agencies to keep kids in secure treatment longer just because they neglected to come up with an appropriate secure treatment plan?

Hon. Mr. Sweeney: It would not be my sense that that is the point. Rather, the section is there to state clearly that as part of the secure treatment there must also be a plan of release.

As a matter of fact, when we put in the 30-day emergency one, the point was drawn to our attention that, on average, the treatment time itself was two to three weeks; therefore, why did we need 30 days?

It was brought to our attention that given the multitude of agencies that have to be dealt with in terms of where the child goes next and what kind of service is going to be made available for that child after he leaves here, we need a little bit of extra time, if necessary, to provide that.

My sense is not that this is a way out, but rather that it is a clearer way of saying that part of the treatment process is what happens afterwards, and a judge has the right to be advised as to what that program is. Now, if it means something other than that, I would ask one of my staff to say so.

1700

Mr. R. F. Johnston: I was presuming that was what it was hoping to accomplish, but I think what I am pointing out is that if you look at the wording of it, subsection 117a(3) says, "The court shall make an order terminating a child's commitment unless," and while looking at that, "the court shall consider whether there is an appropriate plan for the child's care on release from the secure treatment program."

It does not really state that there is an obligation upon the agency to come up with that; rather it could say, "We are delayed in finding an appropriate placement." The judge might then be in a position of having to say: "Under subsection 4, I have to take into account whether there is an appropriate follow-up here, and I do not think there is. Until there is, I am going to extend the length of time this child is in secure treatment. You come back to me with another plan."

On the face of it, that may be a good thing in many cases, because you do not want kids dumped if they are going to need some kind of follow-up placement in the community. On the other hand, I am interested to hear these statistics about the average treatment time. I remember the last time I got statistics from the children's mental health centres, the average stay of 13-year-olds and 14-year-olds in those centres, in terms of the residential programs, specifically around kids who were recurrent secure treatment kids, was a much longer period than that usually. I am surprised to hear this 30-day average for treatment.

Hon. Mr. Sweeney: Let me make two observations. First of all, as I indicated earlier, we are talking in the act now, with this 30-day amendment, of two different time lines: short-term emergency and longer term. It could be up to 180 days. Therefore, when I talk of the two or three weeks, I am talking about the experience of the secure treatment centres with respect to the short-term emergency. I am not referring to the longer term.

Second, the purpose of this section is to give another opportunity in the act for parents or societies or children themselves to apply for a review of their treatment time. At the present time, only the administrator has the power to release the child, so we are adding in another dimension. This gives the parent or a society or the child himself an opportunity to apply for a review of the original time allocated by the court—in all of this case, we are talking about the court allocation, not the short emergency—or a court-ordered extension.

Basically, all we are saying in the section you have expressed concern about is that when the parent or the child or the society comes before the judge and says, "I want to ask for earlier release," the judge has to be assured that in fact there is someplace for this child to go that is appropriate.

If the administrator has said, "I don't think it's a good idea to release this child at this time," and the parent comes in and says, "I disagree with the administrator; I think he is ready to be released," the judge will naturally say: "OK, if he is going to be released, released to what? You parent, or you society, or you child have to assure me that there is a proper plan for you to go into."

I think, quite frankly, that is reasonable. If I were sitting on the bench, I would want the same thing. Nobody is trying to prevent it. Where

there might be a difference of opinion is that the administrator of the centre might say, "I don't think you're ready to go."

Mr. R. F. Johnston: He also has the right to say, "That is not an appropriate program" and to make the arguments against that and say, "This hasn't been thought through and we haven't been involved in the program that is taking place." All those things are involved as well.

Hon. Mr. Sweeney: In fact, if he could convince the judge of that, that is his option.

Mr. R. F. Johnston: Yes, the positive side of this is good. I am just worried about the downside because of the length of time. Let me be clear about this section. This is for court-ordered kids who have been in for what: 180-day periods or not?

Hon. Mr. Sweeney: Up to 180 days.

Mr. R. F. Johnston: Exactly. These are not the ones who are in overnight.

Hon. Mr. Sweeney: No, this is not the short term.

Mr. R. F. Johnston: I cannot remember what the average stays were. I do not have the stats with me, but I recall their being almost half a year for kids in secure treatment, way back three years ago. All that may have changed at this stage, but for 13-year-olds or 14-year-olds who are on court-ordered treatment, most of them lasted the full 180 days and many got repeats at that stage, as I recall.

I am glad that it is not just left to the administrator. That is a positive thing. I am just worried that the unavailability of a program or the lack of participation of the centre in terms of making sure an appropriate program is developed. Parents are often not going to be in the position to have that worked out before the child comes out. They may in fact be of the opinion their child should just be straightforwardly on the street, if they are the ones who are taking the action.

Hon. Mr. Sweeney: I think the significant change here, Mr. Johnston, is that under the present legislation, if we do not make this change, then it is solely in the hands of the administrator. There just is not any other option.

Mr. R. F. Johnston: Sure. I am not disagreeing with that.

Hon. Mr. Sweeney: We have opened another door.

Mr. R. F. Johnston: Right.

Hon. Mr. Sweeney: All the section that you have expressed concern about says is that the court, in making its decision as to whether or not to grant the request of the parent, child or society, is to ensure that there is a plan to follow up. He is not going to do it just at the request. He must be convinced, and you are right that the administrator of the centre might very well be able to convince the judge that what the parent is proposing is not appropriate.

If that is the case, then I presume the judge is going to rule

accordingly. If, on the other hand, the society or the parent or the child himself is able to convince the judge that he should be out now and there is an appropriate program, then I presume the judge will so rule.

This is another option that was not there before. We think, again, it is in the best interests of the child to have another option.

Mr. R. F. Johnston: I just suggest that if you are not going to change the act, then you should bring in some regulations which make it really clear that the secure treatment facility has an obligation to start developing that kind of liaison. I do not see it written in here and it certainly is not in the old act that they have that obligation to do it.

We have the process for the long-term review committees and that kind of thing, but I think we want to be really clear that this is not used—when you think of the position that parents are generally in when they are up against the children's aid society or when they are up against any of the major agencies in a court in trying to prove their case in terms of the readiness of a child to be out of protection and into their care again, or whether it is, in this case, that his mental health is such that he is now capable of coming back in the family, I do not think I am wrong to say that the professional opinions are given much more weight than are the parental opinions.

I think there is a danger of this reinforcing that if we do not have clearly in place some sort of process which says that during that 180-day period, there will be planning undertaken for what the follow-up will be, so that when the request has been made and the judge has a look at it, he can then make a valid decision about it. If you can handle that in the regulations, fine.

Hon. Mr. Sweeney: I believe Mr. Johnston is making a very appropriate suggestion. I just got the nod from my staff here that is possible in the regulations, and we are quite prepared to take a look at that.

Mr. R. F. Johnston: OK, great.

Mr. Chairman: Is there further discussion of section 15, section 117a? Those in favour? Carried.

Mr. Chairman: I call section 15, section 117b. Any discussion? Those in favour? Carried.

Section 15 agreed to.

1710

Section 16:

Mr. Chairman: I call subsection 16(1). Any discussion? Those in favour? Against? I see six and two. Carried.

I call subsection 16(2). Discussion? Those in favour? Against? Six and two. Carried.

I call subsection 16(3).

Mr. R. F. Johnston: If I am correct, subsection 3 says: "Clause 118(2)(b) of the present act is repealed and the following substituted

therefor." I will read the old one and then the new one so people understand what has happened. This is in terms of admitting a child to secure treatment.

In the old act, clause 118(2)(b) reads: "The child has, as a result of the mental disorder, during the seven days immediately preceding the day of the application, caused or attempted to cause serious bodily harm to himself, herself or another person."

This time we have changed the wording back much to what it was like in the old child welfare legislation. We have taken out the seven days and have added in "attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm."

The old act used to have this wide-open. When we first looked at what we were going to do with the Child and Family Services Act, this section with the seven days was left in. The arguments were made to us quite vociferously in those days that it was a very dangerous thing to have—sorry; when it was first brought back to us, the seven days were left out and there was a wide-open season on any child who would threaten, at any time, people in the institution or seemed to be threatening bodily harm to himself or another person at any time during his incarceration, if I can put it that way, or his treatment.

It was pointed out that that was a pretty sweeping power to give to an agency in terms of the suppression of liberty that is involved in secure treatment. The argument was made, and I agreed with it entirely, that you had to be able to prove some sort of recent threat which had substance, such as a really substantial verbal threat, to be able to say that you would actually take away somebody's liberties.

I think we could think about this in our own cases. If it ever comes to the blowups I have from time to time, God knows, I would never be released from this institution, which would be a fate worse than death.

Hon. Mr. Sweeney: Others have tried.

Mr. R. F. Johnston: Others have tried to do that. That is right.

I just say that—

Hon. Mr. Sweeney: The honourable member just does not co-operate.

Mr. R. F. Johnston: There was a chain called Viking Houses which was operating up until really recently, which I tried for a number of years to get rid of as a group home operation in this province because I felt that it used undue violence in terms of its treatment process, and specifically in terms of its use of holdings, in the nontherapeutic sense. They are gone now and I am cheered by that, although I am not cheered by the fact that a number of spaces were not replaced immediately. But that is another matter and I will not get into the side issue involved.

I was not the first to deal with Viking Houses. They were dealt with years before and had just been continually reviewed and allowed to continue. But when I first raised that case, a group of staff people who had been let go because they complained about the way things were handled there talked to me about a technique that was often used. If they had an emotionally disturbed kid who was at the end of the period of time that he might be staying in that home, one of the things to do was to try to get the child to respond in such a

way that they had to use a holding to hold the child down for a long period of time. They would then be able to use that as part of the argument for why the child should be made to stay longer in that institution.

I should not allege a huge amount of things here, but it could be interpreted that that could even be done for financial reasons for a private organization that is making money in this business, so that it did not lose money because of a placement. I do not believe that it was as crass as that in the cases that were raised with me.

If it is being argued by people in the mental health community that seven days is too restrictive, and I presume that that was the pressure that was being brought back, I would suggest that the idea of having this wide-open again with no time limit, no sense of immediacy, recent threat or serious threat to do bodily harm, I am just very concerned about the civil liberties abuse of this for kids whose liberties are already incredibly restricted.

I just appeal to the minister and the members of the Liberal caucus to think seriously about the notion of leaving that now wide-open and not putting in some kind of wording which, if it does not have a specific time, because that is too difficult—in other words, if the kid did it eight days ago, you cannot take it to the court—has slightly more flexibility in terms of its language. I hope we can come up with something like that rather than just this blanket notion that a threat, an outburst by a child who may have been provoked, could be reason for the child being kept back in an institution for up to another 180 days possibly.

Hon. Mr. Sweeney: If I can make one clarifying point, this particular reference is to the 30-day maximum emergency admission only. It has nothing to do with the 180-day court-ordered admission. They are two very distinct sections.

Mr. R. F. Johnston: So you could be in for another 30 days.

Hon. Mr. Sweeney: This is for an initial emergency admission for a maximum of 30 days which cannot be renewed. If the time is going to exceed 30 days, then the original section of the act must apply. In other words, it must go to court and the maximum term can be 180 days. But for this section we are dealing with now, we are talking only—this is the new part that has been put in; this is the emergency, short-term, maximum 30 days.

I would also point out to the honourable member that that section he refers to has two parts. First, the child has to have a mental disorder. We are not talking about picking up kids who just threaten somebody. There has to be a clear history or evidence of a mental disorder. That is the first qualifier. The second qualifier is as it is described there.

I repeat for the honourable member that there are a couple of safety valves built into this 30-day emergency admission. First, within 24 hours, the administrator must notify the office of child and family service advocacy and the official guardian and they, in no more than five days—preferably less than five but no more—must make legal assistance and advice available to that child and to the parents or whoever. Of course, if there is any evidence whatsoever that the admission was an improper one, the legal advisers would immediately act.

I do not want the honourable member to confuse this short-term admission with the longer-term court order. They are two different things.

Mr. R. F. Johnston: We are not talking here necessarily, though, about a child who is on the street being picked up and then it being said—

Hon. Mr. Sweeney: No.

Mr. R. F. Johnston: "You've threatened us and therefore it's going to happen." This is a child who is probably in open treatment someplace or other, who this is being done with. Right? So it still is quite possible. Many of these centres have open and secure areas or are affiliated with other groups which have secure treatment areas.

Hon. Mr. Sweeney: Let me point out again that there are only four secure treatment facilities in the province. There is the Roberts/Smart Centre in Ottawa, Whitby Psychiatric Hospital, Youthdale in Toronto and the Syl Apps Youth Centre. The only one we operate as a ministry is Syl Apps. Those are the only four. So we are talking of a relatively limited number of kids.

Mr. R. F. Johnston: Does not the Children's Psychiatric Research Institute now have some secure?

Hon. Mr. Sweeney: No. There are only four. As the operator of Youthdale who was in here before said, and he was being a little bit flippant, I would say: "If you people think we're going to keep people any longer than we absolutely have to, you're kidding yourselves. We have a waiting list, quite frankly. We just don't do that. We don't need to do that." There is a very clear distinction between the longer-term court order and this short-term admission.

The point about the seven days, as the honourable member has pointed out, is that it was drawn to our attention that it just excludes kids. The ones they really worried about are the suicidal ones, they said, more so than anything else. It could have been three or four weeks or three or four months before this thing—again, remember, we are talking about a kid who does have a recognized mental disorder. It is not the first time. There has to be some kind of history. You just do not pick up the kid off the street; you do not pick them out of their homes.

Mr. R. F. Johnston: This gets used as an excuse at that point. Youthdale and I have not always agreed on things, which should not be a major surprise.

You have a kid who is in Youthdale, let's say. OK?

Hon. Mr. Sweeney: No, he is not there.

Mr. R. F. Johnston: OK. Let's say he is in one of the other—

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Hon. Mr. Sweeney: He could be in the psychiatric ward of a hospital, he could be in an agency home or he could be in his own home. He has a history of mental disorder—let us say, suicidal tendencies—and all of a sudden this thing blows up again.

Mr. R. F. Johnston: Exactly. So what we do then? Instead of having a time limit which says, "Just a few days ago, Johnny blew up and threatened this and that," we say, "We're having trouble with Johnny again," and so on. "Has he threatened anybody recently?" "No, but you remember he did three or

four months ago. Then that gets used as the excuse to put a kid in, rather than having a real diagnosis at that particular moment, which I would argue should be the substance of it.

I do not understand, if this is a suicidal child whom we are worried about, why we would not want to do something pretty quickly after that has happened and take the kind of action being suggested. To say that a child who may be in his own home can have a wide-open reference point for a threat at some point and use that as the trigger to get that child into secure care is not, in my view, an appropriate thing. We need something which says that happened recently or there is no urgency, quite frankly; or if there is an urgency, then something real should be used for that and not some alleged threat or real threat that was made a longer period of time ago. That would be my argument on that.

I would also like to come back—I see others have their hands up—to what the distinction now between 180 and 30 days seems to have done in terms of the five-day obligatory release side of things. We have lessened the rights of those people in the shorter period of time because of this distinction we are making now, but I will come back to that.

Mr. McClelland: The flipside of that, just from my perspective, is that there are a couple of things built into the wording of the language. First of all, it talks in terms of "a result of a mental disorder." That of necessity, in my opinion, puts it into a reference where somebody has been in treatment. That assessment has been made and determined. Otherwise, the criteria do not apply for us to determine that there is a mental disorder and somebody is in a treatment program or, as you say, in the home, that there has been some assessment, some intervention of professionals with this individual's problems.

Furthermore, the history of many cases, all too tragic, is that there has been a pattern which has gone, for lack of better terminology, underground, has been submerged for some time. The problems are apparently dealt with. Then they manifest themselves in a very sudden fashion. Bearing that in mind, we have to have a provision to be able to deal with something that perhaps has been a pattern or cyclical in nature in the past, but is submerged—and we have seen this, those of us who have had at least some peripheral involvement in delivery of services in the community—and there is a manifestation of it. It is indicative of a serious problem.

All too often what has been said in the past is, "Well, we'll see if it works itself out." There is no reference back to something six months ago or a pattern that might be before that. That is the flipside of it.

Mr. R. F. Johnston: Of course it is.

Mr. McClelland: I understand what you are saying, but I think we have to keep that in balance, in terms of meeting the needs of those kids.

Mr. R. F. Johnston: If I can respond to Mr. McClelland, of course that is the situation. Taking a schizophrenic child is a good example of this. You have to know what the patterns were in the past, but you also have to balance between their rights and presumptions of recurrence of mental disorder and disruptions of the family. All those kinds of things have to be balanced.

I am just saying that what we have done now is said you can go back and use any reference point you want on that child. Rather than having to prove

right at the moment that the child is in need of secure treatment, you now can take a reference point back to any time at all when he once threatened. "We have a sense that he is in trouble again now. Can you show us some examples so that we could actually get an order on this?" "No, not really." "Then let's use the old example and let's get him for 30 days on that."

In the best judgements of a lot of parents who are having trouble, who are having real difficulty with their kids, that may be a big help to them, but there is a real danger of abuse of it. All I guess I am asking for is that there should be some imperative for getting somebody institutionalized in secure treatment—just remember that—taking away his liberties, that has something to do with what is real at that moment and not refer back to something which was real and may not be real at the moment. The obligation on the state should be that the mental disorder is the problem now and recently, seven days, eight days, 10 days or whatever, and not something that can be used, drummed back up out of somebody's clinical history some time ago. Surely we will agree to that.

Mr. McClelland: Yes. I realize what you are saying. I think that we are not saying different things. Perhaps you are talking about the trigger mechanism that brings the history back into reflection. You are looking for something that triggers reflection into the past being in a reasonable time frame. You are saying that something with relative immediacy allows that opportunity.

Mrs. O'Neill: Along the very same theme, I do think at least one of the professionals who appeared before us suggested that the seven days was really quite short, and often these things had a three-week, cyclical type of occurrence. The point was brought up that one or two years would be totally unreasonable, but certainly two or three weeks or one or two months would not be.

We are dealing here with professionals, hopefully, who have a code of ethics. We are dealing with, as we have said, rather seriously ill clients, and the diagnosis is often deep depression. Should we have to have that person go into the stage of threatening either himself or someone else and not take all of the signs of that depression that appear? That is the question that seems to be before us. The professionals seem to say this would be quite helpful in avoiding the violence that might erupt if we do not take this step. As even you yourself have said, there is usually some kind of a pattern, and I tend to use "cycle," to some of these illnesses. This is what I really hope we are achieving here.

Mr. R. F. Johnston: Again, I am not arguing with what people are trying to do; I understand what they are trying to do. What I am worried about always is this swing of pendulums that we have in the way we deal with these things. I am afraid that what we are doing now is swinging back to something which is wrong for us to do.

Perhaps we could distinguish here two different things. One, we could distinguish between the threat by words and the actual conduct and have two separate subclauses which distinguish between what the seriousness of those two things are, because I think they are substantially different. To threaten and to actually be causing harm are two very different things, and we could have something which recognized the recency of a two-week or three-week period. I do not care if we have the words of the days in, but we have nothing here at all to limit it.

They may say that a year is unreasonable, but under this act, the way it

is written now, there is nothing which says that something that was done a year ago could not be used for this, for a threat. I think that is just the wrong way for a threat.

I am not talking about kids who have actually attacked a sister or a parent or whatever. In that case, you clearly want the kind of automatic movement to a quick 30-day period, if you can do that. But under this notion of the verbal threat, it seems to me we need to have some notion of recency in it and reality to it, not just something which would be used from an old clinical record. I do not know what is possible here, whether we can make that kind of distinction between the actual perpetrating of a threat and threatening.

Hon. Mr. Sweeney: During the two days of hearings, we had representatives from three out of the four treatment centres: Roberts/Smart, Whitby and Youthdale. The only one that did not show was Syl Apps. In each of the cases, they made two observations to us from their professional experience. Quite frankly, I do not have it. As Mrs. O'Neill has just indicated, sometimes we have to take the advice of professionals who are actually working in the field on a day-by-day basis. The seven days were just not practical and there was no real time. Every individual is different.

The second point that they made was, because the question was raised with them, to draw our attention to the fact that we are not talking about an insubstantial threat. The words clearly are "made a substantial threat to cause bodily harm." That is a judgement call; sure it is. It is much like the words "substantial risk" in the other part of the legislation. But given all the evidence available to us from the people who work with these kids day by day—and we had three out of the four here—they made a case which I found supportable.

I hear what Mr. Johnston is saying, but quite frankly, balancing the two perspectives, I think this is the proper thing to do. If time proves that it is not going to work properly, we will bring it back again. We have had two years to consider this.

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Mr. R. F. Johnston: In the meantime, his rights are screwed by it. There is no balance in this. That is the problem with it. If you put in the balance something, I do not care if you extend the seven days, but have some restriction on it. Just because the psychiatric community has given you this impression—and this is why I did not attend the two days of hearings because I know I would not be able to handle myself on this—I cannot believe that you would not have some sense of limitation on this.

I accept the notion of the substantial threat side of it, so that is OK. But to say that there is no time limit on this at all is just leaving it so wide open to abuse that I cannot believe, frankly, that Liberals would do that. It just does not make sense to me. It is not part of your individualist protection ethics, I would not think.

Hon. Mr. Sweeney: The problem we had in differentiating, Mr. Johnston, is the fact that there is no evidence available to us at this point in time. I remember your comment about Viking Houses, but we are not talking about group homes here. We are talking about highly professionally staffed treatment centres.

Until someone can demonstrate clearly to me that these people are

misusing that professional status and that they have got so many beds around that they are picking kids up off the street for no good reason, then I continue to be persuaded that what we are doing here is the better of the two avenues.

Mr. R. F. Johnston: I give in.

Mr. Allen: If you recall, I did put that question to one of the representatives of at least one of the mental health centres. I think one of my comments after I had done that and asked a similar kind of question of another professional person was that simply because the profession professes not to be misbehaving, is functioning out of goodwill or is operating professionally as they see it, it does not mean that we should not be very wary of the fact that legislation can, none the less, be too open-ended from the point of view of proper protection of rights and concerns that we have.

There is no reason why a reasonable limit in time in this clause ought to provide any hardship to any professional person functioning in that setting, as far as I can see. They said, "Oh, no, we wouldn't do it if at such and such a time it had taken place between the event in question and so and so." But people would use different times, dates and reference points. I think it is useful for us to think very seriously of a specific time-bound reference for an event of that sort in this instance.

I recall, for example, when we discussed the rights of involuntary competent patients to refuse treatment, how the professional community came in to our hearings and told us time and time again and made it quite plain that its authority was being abused and its confidence was being abused by what we were proposing. Finally, the minister learned or recognized that the incidence of cases on that issue was so minuscule across the province that the issue was not anything like what the professionals told us. Second, the issue was the question of defining "competency" and not the question of right.

To this day, most of the psychiatric community still does not accept that proposition, but it was a most reasonable thing for that committee to have rejected that professional advice and opinion and to have done something different from what the professionals advised.

I would simply suggest to this committee that this is one of those instances where there should be a limitation and the committee ought to really seriously consider that, whether it is the seven days. The seven days may well be too short, but one needs to have a reasonable functional time frame around this kind of restraint of liberty.

Hon. Mr. Sweeney: Mr. Allen, I recall, as you do, the debate on the Mental Health Act. I was on the committee that worked with that legislation. I think the significant difference between that and this is that you are talking of adults there in terms of competency to accept or to reject treatment. Here we are talking of kids. That is the first significant difference.

The second one is the alternative to having something like this in terms of short-term emergency admission when all the evidence suggests that this is a problem we have to deal with quickly. Simply, it is not appropriate or not in the best interest of the child to wait.

The alternative is to go through the court process. I am not saying that is going to take for ever, but we all know we are talking of days and probably weeks. In the meantime, we have a child whose history and all the evidence

that is available says there is danger here of suicidal tendencies or even homicidal tendencies. Gad, if we do not get this kid quickly and start settling him or her down—and we have built in the 24-hour protection right off the bat, we have built in the child advocacy, we have built in the official guardian.

I have to disagree with you and your colleague that there is a balance here. We have the emergency nature; we have a child, not an adult; we have evidence going back a long time with people who work with these kids that when the thing flares up, it is going to happen.

How many times have we all been advised of the story of the suicidal kid? The signs were all there, people ignored them, and you look back afterwards and ask, "How could we have missed it?" Then they are hanging from a tree or have a bullet through their brain or whatever it is they choose to do to themselves.

I am just not prepared to take that risk, and if I have to err, quite frankly, on the side of a kid being in there for four or five days when he should not be, as opposed to not being there—

Mr. R. F. Johnston: Thirty days.

Hon. Mr. Sweeney: Well, we have the safety valve, though, for the first five days.

Mr. R. F. Johnston: No, you do not. You have a process, you do not have a guarantee like we used to have that the child will be out after five days. He is in there for 30 days. Let's be right about this.

Hon. Mr. Sweeney: I agree it is not a guarantee, but there is a safety measure built in there. We are not talking about a lot of kids. This is a relatively few kids in this province who go through this process.

Mr. R. F. Johnston: Exactly. It is the same point of involuntary committal.

Hon. Mr. Sweeney: That is why we should err on the side of allowing more leeway to protect them when there is potential danger.

Mr. Chairman: Is there further discussion of subsection 16(3)? Those in favour of 16(3)? Against? Six and two; carried.

I call subsection 16(4). Any discussion?

Mr. R. F. Johnston: I do not know why I bother, but here we go again.

Because we have moved to the 30-day period here, what we have now is a whole new set of things which come into play, beginning with this 24-hour notice to the advocacy office or official guardian, etc. Then we move into a process which is undertaken "after receiving a notice under subsection 6, unless the official guardian is satisfied—

Hon. Mr. Sweeney: The old legislation—

Mr. R. F. Johnston: The crucial difference is that the old one used to say, "The child shall be released" or "an application shall be made under section 110 for an order for the child's commitment to the secure treatment program."

In this case, now what we have is a group of kids whose rights will be different because they will be put in for 30 days, even though after that they may go through the 180-day thing, with a regular court order. Their rights are now different from a child who is brought up under the other method for the 180-day referral.

It is also different from what we do with adults, but I gather that does not bother the minister. There is a 72-hour requirement for proving the case or releasing somebody under the adult mental health legislation.

What we have done here, and I gather the minister accepts that and thinks it is fine, is that we have set up a double class and we are basically making it harder, in my view, for the child to be released. The burden of proof is to be placed on the agency, essentially, more than we did in the old act, and I regret that. That is why we are voting against it.

Mr. Chairman: Further discussion of section 16(4)? Those in favour? Against? Carried, six-two.

I call section 16 in its entirety. Those in favour? Against?

Section 16 agreed to.

Section 17:

Mr. Chairman: I call section 17. Any discussion? Those in favour? Six. Against?

Section 17 agreed to.

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Section 18:

Mr. Chairman: Discussion? Those in favour? Six. Against? Carried.

Section 18 agreed to.

Section 19:

Mr. Chairman: Discussion? Those in favour? Six. Against? Carried.

Section 19 agreed to.

Section 20:

Mr. Chairman: Discussion?

Mr. R. F. Johnston: I want to be clear about what the substance is of the change in clinical records in terms of the powers here. Is it my understanding this is substantially different than under the Mental Health Act?

Hon. Mr. Sweeney: No. As a matter of fact, this is a section of the act that was not proclaimed. Therefore, the centres have been operating under the Mental Health Act. What they said was that had the original section been proclaimed, they would not have the power to go before a judge and argue that a part or all of the clinical record not be made available in a public court hearing, such as was available to adults under the Mental Health Act.

Therefore, this section has been put in to make it consistent with the Mental Health Act. In the original legislation, for some reason—I do not know why—it was left out. In a sense, it is correcting something I suspect would have been done originally, and I do not know why it was not.

Mr. R. F. Johnston: Is subpoena mentioned in the Mental Health Act?

Interjection: Yes.

Mr. Chairman: Any further discussion of section 20? Those in favour? Carried.

Section 20 agreed to.

Section 21:

Mr. Chairman: On section 21, I have notice of an amendment.

I was going to call the existing section, and then I would call the amendment as a second part. Any discussion on the the existing part of section 21? Those in favour? Six. Those against? Carried.

Mr. McGuinty moves that section 21 be amended by adding thereto the following subsection:

(2) Section 199 of the said act is amended by adding thereto the following clause:

"(h) prescribing forms and providing for their use."

Is there any discussion or clarification?

Hon. Mr. Sweeney: Yes. When we were discussing this warrant form with the justices of the peace and the courts, etc., it was drawn to our attention that it would be more appropriate and that there would be greater consistency in decisions if there was a form that could be used, rather than each justice of the peace doing his or her own thing. Consequently, we are simply saying here that under the regulations, we would in fact prescribe a form and provide for their use.

It is to result in greater consistency from justice of the peace to justice of the peace in terms of making the decision about whether to issue the warrant. You will recall from previous discussion that the justice must be persuaded by the parent or the guardian or the society, as the case may be, that there are reasonable and probable grounds that this child would be at risk if the warrant were not issued and the child were not apprehended.

We want to be sure, to the extent it is possible to do that—we will never eliminate judgement calls—that there be a form which the justices of the peace will all use. It will result, hopefully, in greater consistency. That is the only purpose of this.

Motion agreed to.

Section 21, as amended, agreed to.

Section 22:

Mr. Chairman: I call section 22. Discussion? Those in favour? Those against? Six to one, I guess. Carried.

Section 22 agreed to.

Section 23:

Mr. Chairman: I call section 23. Discussion? Those in favour? Six. Those against? Carried.

Section 23 agreed to.

Section 24:

Mr. Chairman: I call section 24. Discussion? Those in favour? Those against? Carried.

Section 24 agreed to.

Section 25:

Mr. Chairman: I call section 25. Discussion? Those in favour? Those against? Carried.

Section 25 agreed to.

Section 26:

Mr. Chairman: I call section 26. Discussion? Those in favour? Those against? Carried.

Section 26 agreed to.

Mr. Chairman: I will now call Bill 107, as amended. Those in favour? Six. Those against? Two. It is carried.

Should this bill be reported to the House as amended? I call the vote. Those in favour? Six. Those against? It is carried.

Bill, as amended, ordered to be reported.

Hon. Mr. Sweeney: I just say thank you to all members of the committee for your patience, forbearance and assistance. This has not necessarily been easy, and there have been some genuine differences of opinion. They have, hopefully, been dealt with, not to everyone's satisfaction, but at least in an open hearing and a public hearing. On behalf of our ministry, I appreciate it and want to thank you.

Mr. Allen: I think that one of the unfortunate aspects of the handling of this legislation has been that it was very difficult for some sections of the relevant communities to know exactly when the hearings were taking place. We ourselves had some contact with only two or three of those agencies, but I have certainly since learned that others were not aware of the hearings and would like to have made presentations.

Hon. Mr. Sweeney: I can share with Dr. Allen that our staff contacted everyone who had made any input over approximately the last year and a half. I can assure you that was on both sides, support or nonsupport. Granted, over a three-day period, it is going to be inconvenient for some people, just physically from a time perspective, to be able to get here, but we did advise them.

Mr. Campbell: I think that was the point, as well. There were two instances where we heard other people. We stayed overtime on one occasion. I realize, as it was pointed out to us, that there were others who would have wanted to appear. They did make written submissions and we accepted them and I believe put them in the record. They were part of the record.

Mr. Chairman: If I might add: As a committee, we did phone the minister's list.

Ladies and gentlemen, I remind you that on Monday it is clause by clause of Bill 109. On Tuesday, it is Bill 100. Then, sometime thereafter, we return again to Bill 109. If there are any amendments to those bills, I would be glad to receive them.

Is there any further business? There being no further business, I declare this committee adjourned until after routine proceedings on Monday.

The committee adjourned at 5:49 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT

MONDAY, JUNE 13, 1988

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitutions:

Beer, Charles (York North L) for Mr. Tatham

Sterling, Norman W. (Carleton PC) for Mr. Jackson

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr. Cousens

Clerk: Carrozza, Franco

Staff:

Baldwin, Elizabeth, Legislative Counsel

Wood, Michael, Legislative Counsel

Witnesses:

From the Ministry of Education:

Ward, Hon. Christopher C., Minister of Education (Wentworth North L)

Carrier-Fraser, Mariette, Assistant Deputy Minister, Franco-Ontarian Education

Tomlinson, John R., Senior Legal Counsel, Legislation Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, June 13, 1988

The committee met at 3:27 p.m. in room 151.

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT

Etude du projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

Consideration of Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

M. le Président: Mesdames et messieurs, bienvenue à une réunion du Comité permanent des affaires sociales concernant le projet de loi 109, Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton.

Ladies and gentlemen, this is a meeting of the standing committee on social development dealing with Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Mr. Chairman: Ladies and gentlemen, before we begin, I have a couple of routine matters. First of all, I think committee members know that tomorrow we conduct hearings and line-by-line consideration of Bill 109. I have to advise the committee that, in response to our letter to the Attorney General (Mr. Scott) requesting that he appear before the committee to discuss certain aspects of Bill 109, we have been informed that the Attorney General will not be appearing and that a letter is on its way to the committee. I have not received the letter at this time.

Mr. Sterling: When do you expect to receive that letter, Mr. Chairman?

Mr. Chairman: We heard officially this morning from the Attorney General's office that he is not coming and we were told then that the letter is coming. I would guess later today or perhaps early tomorrow.

Mr. Sterling: We will consider at that time whether we want a warrant for his appearance here in front of the committee.

Mr. Chairman: I am open to suggestions when you would care to discuss it.

Mr. Sterling: OK.

Mr. R. F. Johnston: It is true that the warrant is underused in this place and we should really consider it at this time, but I think this is probably another good reason we should not move to clause-by-clause consideration today, given especially the nature of some of the amendments which seem to be forthcoming from the government. It would be nice to have the comments of the Attorney General on record, even if they are in a letter, before we move on to that.

As was indicated in the House, the preference of both Mr. Allen and myself is that we would have a chance to take the 60-some—I was going to say "60-odd"—amendments back to our caucus tomorrow to let the members know that there has been such a large number, to get them either to reaffirm their recommendations about how we wish to proceed or to alter those in some fashion or another.

As a result, from our perspective, it would be premature for us to move right into clause-by-clause today. We would prefer to use the time available to us this afternoon to have ministry officials take us through the amendments, sort of giving us an idea of why they have been moved, what was the purpose, what they were responding to, if he will. I was thinking of this not so much as a time to do any grilling of staff as a matter of just getting the explication. We will save the grilling for next week.

Mr. Allen: A reprieve.

Mr. R. F. Johnston: It is just a brief reprieve, and also it heightens suspense and that kind of thing, which is always important in these matters. If it were acceptable to other members of the committee, our preferred way of handling this would be to get the briefing today, essentially, go to our caucus tomorrow, and then, because of problems with varying schedules, mine tomorrow—that is why we brought on Bill 100—and the minister's on Thursday, we will probably come back at the beginning of the week to deal with these.

Mr. Chairman: Before I ask the minister to respond to that, I listened in the House today. There are a large number of amendments, and for that reason I suggested we might have a briefing today and postpone further discussion.

As Mr. Johnston has just said, there was some thought to our not meeting Thursday anyway, for particular reasons. What we are discussing really is a briefing on the amendments today and then resuming clause-by-clause consideration of Bill 109 a week today. Is there any other discussion of that?

Mr. Beer: I would have to say that I agree wholeheartedly with Mr. Johnston on grilling, because it is very hot out today and I think next week would be much better for grilling. I also agree with Thursday. I just want to put that on the record.

Mr. Sterling: I agree as well. There is another reason outside of our caucuses. That is, there were 35 or 39 groups which presented briefs to the committee. I think it is only fair to those groups that they have a look at these amendments.

I understand that the Carleton Board of Education and the Carleton Roman Catholic Separate School Board, the two boards that I represent in my area, did not receive copies of the amendments before today. I was talking to one of the chairmen this morning, and I was talking to a representative of the Carleton Roman Catholic Separate School Board. I would hope that they would get copies of the amendments forthwith so that I can in some way be advised as to what they think of the amendments.

It is important that people and groups who take time to respond intelligently to a government bill and then are maybe subject to a whole new bill in terms of what the amendments mean in the final analysis should have another crack at it, at least through members of the committee, if not going back and hearing them once again.

Mr. Chairman: Would the minister care to comment?

Hon. Mr. Ward: I certainly think that the proposal that has been put forward by Mr. Johnston is appropriate. From the outset we indicated that the process that we are undertaking in preparing Bill 109 for consideration by the Legislature differed greatly from the practices we have used in the past, primarily because of the time frames and the complexity of the legislation.

I hope members do recall that we had a consultation document which was widely circulated throughout the Ottawa-Carleton community even prior to introduction of the legislation. There was not an opportunity to take the benefit of that consultation to put in place suggested amendments, even the very basic kinds of housekeeping amendments. It was not possible to have those printed in the copy of the bill that was put forward to the Legislature. We were open and upfront about that from the outset.

I want to indicate that that is one of the reasons for the amount of paper that the committee does have to consider. I think it would be helpful to all concerned to have the benefit of a ministry briefing on each and every one of those amendments.

I would also point out that during the discussion we had over a working luncheon up at the hearings in Ottawa, I suggested that it might be appropriate to take some time between the hearings and the actual clause-by-clause consideration so that we could in fact benefit from having an opportunity to give careful consideration to the many points that are made.

Other than that, I just want to indicate that I do think that would be a helpful methodology. I am a little concerned about Mr. Beer's reference to the grilling that will take place. I will be talking to my parliamentary assistant about assuming this particular spot next week.

Mr. Sterling: What is your critical timing on this piece of legislation? Do you have to have it before we rise?

Hon. Mr. Ward: Yes. We will have to have the legislation before we rise, because of the provisions of the Municipal Elections Act as it relates to the election of the school board. It would make it absolutely impossible for this legislation to be offered in time for the 1988 election if we cannot get it before the House rises. If we want a French-language school board in Ottawa-Carleton by the 1988 election, which is the position of the government, we will have to complete this legislation prior to rising for the summer.

Mr. R. F. Johnston: It seems to me that as we go through this, there are some on which we do not have to spend much time at all. They are obviously wording changes which are necessitated by other changes, etc., and others that are clarifications. But there are some pretty substantial ones on which we could use a good explication. We will leave it in the chair's hands to rush us through some of those other parts.

Mr. Chairman: Sure. Is there any other discussion? Minister, would you care to introduce your staff?

Hon. Mr. Ward: With me is the assistant deputy minister, Mariette Carrier-Fraser. I will ask her to introduce the balance of her staff.

Mrs. Carrier-Fraser: This is John Tomlinson from our legislation branch. In the back, and I will ask him to move forward to the table so he can

help answering some of the questions, is Alan Wolfish, the director of legal services within the ministry. This is Maurice Lamontagne, who has been working as a liaison with the Ottawa-Carleton group and who works from my office.

Mr. Chairman: Thank you, gentlemen. Would you then come forward? For the benefit of the translators and of Hansard, the first time you speak perhaps if you would you give your name again so that they know whom they are dealing with. Would you like to begin?

Mrs. Carrier-Fraser: I think everyone has a copy of the motions.

Mr. R. F. Johnston: I guess the only clarification I need on that is because we have a big pile and we have the recent additions that came in at noon. I just want to make sure I am placing the right ones in the right place. The one that says sections 35 to 37, does that refer to subsections 35 to 37 or is that a section?

Mr. Tomlinson: It is a section.

Mrs. Carrier-Fraser: Motion 24.

Mr. Chairman: For the benefit of the entire committee, could we go through it? The one, for example, that says sections 35 to 37—that is a refinement of the one it replaces. Is that correct?

Mrs. Carrier-Fraser: Yes it is. •

Mr. Chairman: Again can I ask: Do all members of the committee have that? For example, it is this one, sections 35 to 37. It replaces another. OK?

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Mrs. O'Neill: Excuse me, Mr. Chairman. Just for clarity, I know that the quantity of paper that has been circulated on this is confusing some of the members. You are talking about the fact that there was a section that had a lot of changes to sections 35 through to 37, but now we have combined them.

Mr. Chairman: Yes.

Mrs. O'Neill: Is that the kind of discussion we are on to right now?

Mr. Chairman: I was simply following up Richard Johnston's points for my own clarification. This one that is marked "Sections 35-37" replaces and refines—it is a rhetorical question—the previous one? That is all.

Mr. R. F. Johnston: It refines the previous amendment that we were given.

Mrs. O'Neill: Yes. There are several—

Mr. R. F. Johnston: I have it numbered as section 23. Mr. McLellan says it should be section 24. In my copy it says section 23 on it.

Mrs. O'Neill: Excuse me, Mr. Chairman. I think it is really crucial that we all work from the same document under these circumstances. I would suggest that we ask Mariette to tell us exactly what document she is working from. There was one given out at 11 o'clock this morning, there was one given out around 2:30 this afternoon and then there was one previous to that. What one are we going to be using today?

Mr. Chairman: With respect, I think you may be talking about procedures within different caucuses as to those times.

Mrs. O'Neill: OK.

Mr. Chairman: I think I am dealing with the most up-to-date one. On Richard Johnston's point, he was trying to sort those out in his own mind. He would not have received them—

Mr. R. F. Johnston: I have now been given a new copy, which should have everything in it, I am told.

Mr. Chairman: Very good.

Mrs. O'Neill: That is the one we are going to use. Is that agreed to?

Mr. R. F. Johnston: Great.

Mr. Chairman: Madam Carrier-Fraser, perhaps the way to do it would be if we were to begin with what I have here as section 1, the earliest one, subsection 1(1).

Mrs. Carrier-Fraser: Yes.

Mr. Chairman: You might mention it. If it looks as though it is a very routine one, I will look around and, if there is no attention from the committee, we will simply move on to one which is less routine. Would that suit you?

Mrs. Carrier-Fraser: Yes.

Mr. Chairman: If you could mention what it is you are talking about, we will proceed that way.

Mrs. Carrier-Fraser: Yes. The first motion is simply taking out a word within the bill itself on page 6. We remove the word "school" from "public school board."

Mr. Chairman: That is fine, yes.

Mrs. Carrier-Fraser: Motion 2—

Mr. Sterling: I have had a little bit of experience with this. Sometimes taking out a word means a lot. If it is just a matter of being coherent with other acts, then that is fine and dandy, I will just let it go; but if it has real meaning, stop us at that point in time.

Mrs. Carrier-Fraser: OK. I could explain this one. "Public school board" simply refers to elementary schools, and we wanted to be sure the public sector of the board dealt with both elementary and secondary. In removing "school board" and leaving it as "public board," then that encompasses the definition of both elementary and secondary schools within the sector.

Mr. Chairman: Again for my own clarification, this is a briefing. We are not going through this thing clause by clause, are we? We are not looking at something that is going to last two hours? I am asking purely for direction. What are we doing here?

Mr. R. F. Johnston: I think we want questions of clarification. It seems what this says is that it is deleting the word "school" from "school system," which is the definition around a separate school board and the region etc., right? This is just taking out the word "school," and we now have the word "system."

Mr. Tomlinson: It takes it out of the term "public school board." You now have "public board." Look at the definition of "public school system"—

Mr. R. F. Johnston: All right. Thank you.

Mr. Chairman: Again, Norm, if I might, this is for clarification so we understand what the process is going to be; the debate will be next week. I am simply asking that so that I know how to proceed here. Is that right?

Mr. R. F. Johnston: Yes. Some of the questions may get a little detailed, but it does not mean that we will be holding a debate on them.

Mr. Chairman: OK. We move to what I have as number two.

Mr. R. F. Johnston: Like this one, for instance.

Mrs. Carrier-Fraser: This subsection is similar to something we had in Bill 30, and it has been added to the bill. It is not an amendment; it is two new subsections dealing with the provision of the act: "... not be construed in any way that"—I cannot pronounce that word in English. I am sorry.

Mr. R. F. Johnston: Prejudicially.

Mrs. Carrier-Fraser:—"prejudicially affects a right or privilege with respect to denominational schools." This is new. It has been added to the bill.

Mr. R. F. Johnston: I remember when we did this in Bill 30. That was partially designed to help us as we went to the courts, at that point initiating it ourselves, it seems to me, in case there were any subsections with which there might be some problems, that the whole thing would not fall apart because of that. I guess that is the reason here, but we are not proceeding to the courts, I gather.

Mr. Tomlinson: It also helps if somebody else proceeds to the courts.

Mr. R. F. Johnston: But we are still not planning to, I gather. I just want to make clear that this is not exactly a parallel to what we were doing with Bill 30; this is in case somebody else goes to the courts.

Another question I had on it was that although this seems to protect the concept of the bill, by allowing that if a section is proven to be prejudicial the whole bill would not fall, if it were a crucial section—for instance, if it were any one of the subsections of section 4 or all of 4 that might clearly be challenged and were proved to be prejudicial—then the whole bill would fall, would it not? That is what I guess I wanted to get an idea about.

Mr. Tomlinson: If there were certain individual topics in 4 which the judge felt had been wrongly given to the full board or were wrongly subject to being delegated to the full board, it is our position that a judge could sever those kinds of things. If it were a more fundamental objection to

the basic structure, then that section would not protect it.

Mr. R. F. Johnston: That was my sort of presumption. It basically gives leeway to a judge to try to protect if he has no trouble with the basic notion while finding fault with certain aspects, but does not preclude the judge from striking the whole thing down if he or she chose to do so. OK. Thank you.

Mr. Sterling: I would just like to ask the minister why he felt it was necessary to put these sections in.

Mr. Chairman: Again, I would ask the committee for some direction here. I am concerned as to whether this is a technical briefing. In fact, everything we do here is political; I now know that.

Mr. Beer: There are some questions that members will have, and I think those will pertain to the issues we want to get clarified. I think we should allow them.

Mr. R. F. Johnston: Wanting to know the reasons for introducing something is a legitimate question.

Hon. Mr. Ward: I do not have any concerns about responding to the member, other than whatever parameters you set to focus the debate during the course of the review of these amendments.

Frankly, the sections are put in there as a precaution, should an individual choose to exercise his right to challenge this piece of legislation or any other piece of legislation, which too is a citizen's right. Should such a challenge on any particular element of the legislation be successful or whatever, this, we expect, could protect the balance of the legislation.

Mr. Sterling: Can I just respond in terms of saying that I have difficulty? When a government enters into a piece of legislation, I think it has to take one or the other position. They have to say, "This is constitutional and lives within the parameters of our Constitution," or the second step is there is a position where, "We are not sure about it, but we're going to something about it and refer it to the courts," or "We can't do it." I think you have one of the three choices.

The trouble with putting this section in is what you are doing is admitting, in my view, that the fact of the matter is that it is very fuzzy, but you are not going to do anything about it. You are frustrating somebody who might consider this an unconstitutional piece of legislation in terms of their beliefs in it.

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Anyway, that would be our problem with it. The problem with this particular section, I might add, Minister, is that on second reading our caucus took a position of support for this bill on the basis of your answer to my question in the Legislature whereby you said, "This is constitutionally correct."

If we have some concerns about the constitutionality, then I have concerns about 15,000 to 20,000 young francophones in my riding and in the Ottawa-Carleton area who may be subject to a situation where the guts of their educational system are wrenched from underneath them by a court. That is

basically where we are.

Hon. Mr. Ward: The position of the government is that the bill is constitutional. The basis for that is the advice we have received. I think it is fair to point out that there is very little in the way of precedent relative to Roman Catholic rights and the rights of francophones under the Charter of Rights, but again our position is that the advice we have received clearly indicates that the bill is indeed constitutional.

I guess I share some of the difficulty the member has, but perhaps mine comes from a somewhat different perspective. My perspective over the course of the past few years around this place is that with many significant pieces of legislation which have been brought forward since the introduction of the Charter of Rights and Freedoms, in many circumstances, there are strong protestations and suggestions that before proceeding we need a constitutional referral. It is true that did take place in Bill 30. It is true that it was demanded by the opposition and other people during the course of Bill 94, the bill that banned extra billing. We heard the same suggestions during the consideration of the pay equity legislation.

Frankly, in philosophic terms, I have a great deal of difficulty in accepting the notion that legislators should act as both legislators and judiciary on each and every one of these issues. We proceed on the basis of the advice that we receive and we assume that advice to be sound and appropriate.

Mr. Sterling: Yes, but by putting the sections in, you are saying that the advice is not sound and appropriate.

Hon. Mr. Ward: Not at all.

Mr. Sterling: That is the way I read it. You are saying, "We think it's constitutional but we're going to put something in that will fudge it up or cover up our advice if it's not right." You cannot have it both ways.

Mrs. O'Neill: I think our perspective is entirely different. We do not think this fuzzes it up at all; this clarifies. Several groups, particularly the separate school groups, francophone and anglophone, have asked for this clause. They have asked in their briefs. They have asked in their presentations. They also have asked for other amendments which you will see as we go through; some of them, more specifically, which I can remember right now are those on facilities. We felt it would take nothing away from Bill 109; it would simply add some strength to what we knew was there. That is why we had no difficulty putting these in, if it will bring more peace of mind to those people who have won protections through the Constitution.

Mr. Chairman: Can we proceed to subsection 3(3)?

Mr. Sterling: I am glad to hear the real reason they were put in.

Mrs. O'Neill: Well, we have had hearings and we have responded to hearings. I do not think we need to offer any excuses.

Mr. Chairman: Can we proceed to subsection 3(3)?

Mrs. Carrier-Fraser: Simply, we are adding "elementary and secondary schools" after "public" in the second line—"The public sector shall govern for the French-language board the public, elementary and secondary

schools"—to ensure that it is clear.

Mr. Chairman: Subsection 3(4)?

Mrs. Carrier-Fraser: We have done the same thing to the next subsection, simply added "elementary and secondary" after "Catholic," to ensure that the Roman Catholic elementary and secondary schools and classes are the responsibility of the Roman Catholic sector.

Mr. Chairman: Subsections 3(6) and 3(7)?

Mrs. Carrier-Fraser: These are new clauses added to ensure that it is very clear that the decision made by the public sector is a decision of the board and the decision made by the Roman Catholic sector is a decision of the board also, so that they do not have to go back to the full board to—

Mr. R. F. Johnston: It does say similar things further on about the jurisdictions being distinct. Is this part of the constitutional play in this? Is this a matter of reinforcing the power of "sector," making sure it is seen to be equivalent to "board" and using that kind of language so that again, in case of a challenge, on that basis—

Mrs. Carrier-Fraser: It is basically really to clarify, to make it really clear that in specified areas of jurisdiction the public sector makes its decision and it becomes a decision of the French-language board as a corporation, and also for the Roman Catholic sector. Through the consultation process, both the public and separate school boards and the Ottawa-Carleton planning committees requested that we put it in.

Mr. Chairman: OK. Further discussion of subsection 3(6) and 3(7)? Could we move on to subsection 4(1), which is the sixth amendment that I have?

Mrs. Carrier-Fraser: Simply, in here we are striking out "public schools and classes" and "Roman Catholic schools and classes" and stating that the public sector is responsible for schools and classes that it governs and the Roman Catholic sector is responsible for schools and classes that it governs. It is a clarification because of the amendment we made higher up.

Mr. Chairman: Paragraph 4(1)6.

Mrs. Carrier-Fraser: What we are doing in here is, to clarify the sector's responsibility, we are changing "religious instruction and visitors to schools" to "school attendance and visitors to schools."

The religious instruction comes up later on in another amendment to clarify the difference between religious instruction and religious education.

Mr. Chairman: Paragraph 4(1)15. This takes us to page 10 of the bill.

Mrs. Carrier-Fraser: This is basically within the French-language translation. There was a mistake; "committee" was translated as "conseils" and we have put it down as "comités."

Mr. Chairman: Paragraph 4(2)3, which is page 12 of the bill.

Mrs. Carrier-Fraser: We have struck out the section which stated, "Allocating to each of the sectors facilities required by them." That comes up later on in another amendment which makes it much clearer when you look at

transfer facilities.

Mr. Chairman: Paragraph 4(3)11.

Mrs. Carrier-Fraser: To ensure the collective bargaining responsibility is really the responsibility of the full board and of its sectors, we have added the words, simply stating "of its employees" to clarify who is responsible for what.

Mr. Chairman: OK. Paragraph 4(3)12, still on page 14 of the bill. It is the same thing.

Mrs. Carrier-Fraser: It is the same clarification. This one addresses professional development, however, instead of collective bargaining.

Mr. Chairman: OK. Subsections 4(13) and 4(14), page 16 of the bill.

Mrs. Carrier-Fraser: These are the two amendments I referred to previously, simply stating that religious instruction is within the exclusive jurisdiction of the public sector, as we have in the Education Act, and religious education, which has a totally different connotation, is the responsibility of the Roman Catholic sector.

We felt it was essential, and also it came through the conference of bishops and the Ontario Separate School Trustees' Association, etc., and the separate school boards in the Ottawa-Carleton area.

Mr. R. F. Johnston: Do we have those definitions in our definitions or are we having to borrow them from the Education Act in terms of this distinction between instruction and education?

Mrs. Carrier-Fraser: Religious instruction is subsections 50(1) and 50(2) of the Education Act. Religious education refers to subsection 104(2) in the Education Act. There is just a small paragraph in there that makes the distinction.

Mr. R. F. Johnston: We have not felt it is necessary to put it into this act as well; that would be redundant?

Mrs. Carrier-Fraser: No, because 104 is referred to when we look at responsibilities later on. In certain sections of the act we say the Catholic sector has the responsibility under, and then we quote quite a list of sections.

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Mr. R. F. Johnston: The reason I raise it is that there has been no allusion to that as yet, as we go through. That comes in another section. I am not saying it is necessary; I am wondering if it is necessary. That is all.

Mrs. Carrier-Fraser: We can note it and if it is not, we will—

Mr. Chairman: Subsection 4(15) through to subsection 4(18), still on page 16 of the bill.

Mrs. Carrier-Fraser: These new subsections make it clear that the full board and the sectors, as the case requires, have exclusive jurisdiction over the acquisition of real or personal property. They have the same

jurisdiction over the sale, lease and disposal of such real or personal property after the transfer of the property to the full board.

Mr. R. F. Johnston: This is in response to delegations' requests, I gather?

Mrs. Carrier-Fraser: Yes.

Mr. R. F. Johnston: Is it also, again, a constitutional question, that if you make it very specific about what a sector has, then it is more clear that it has the powers of a board?

Mr. Tomlinson: Yes. One of the major concerns with Catholic groups was that the Catholics on this board would not have as much power over their property as is normally the case with a separate school board. This was to clarify that, indeed, they will have virtually everything that a separate school board does.

Mr. Chairman: Further discussion? We move to subsection 7(1), still on page 16 of the bill.

Mrs. Carrier-Fraser: We have removed clause (c) in this case and added "or" between clause (a) and clause (b). Clause (c) comes up in another amendment further down the line. It is the right to an education.

Mr. Chairman: Subsection 7(2).

Mrs. Carrier-Fraser: It is the same technical amendment as in subsection 7(1).

Mr. Chairman: A striking-out section. That was page 18. We are still on page 18, I think; subsection 7(2a).

Mrs. Carrier-Fraser: This is a new subsection added. It is the old clause (c) we had in subsections 7(1) and 7(2) before, to deal with an adult resident pupil of a sector.

Mr. R. F. Johnston: Is there a difference in the language? Is there anything new in it?

Mrs. Carrier-Fraser: Not really. It is worded slightly differently, but it addresses the over-18—

Mr. R. F. Johnston: It puts them both together.

Mrs. Carrier-Fraser: It is a child of a French-speaking person in this case, and we did not have that in there before; not just any child, because the Education Act does not deal with a child of a French-speaking person.

Mr. Chairman: Section 8, which is page 20 of the bill.

Mrs. Carrier-Fraser: In this case, we strike out "an elementary," to simply make sure that the section is applicable to both the elementary and the secondary school. It gives the right to attend a school, whether elementary or secondary.

Mr. Chairman: Subsection 9(5), still on page 20.

Mrs. Carrier-Fraser: This question deals with the open access provisions of Bill 30, which apply to the French-language board between the sectors and across denominational lines at the secondary level.

Mr. R. F. Johnston: Just on that little explication, we have gone from two clauses— It has just been clauses 9(5)(a) and (b), is that right? Now we have the others. Was there a reason for that?

Mrs. Carrier-Fraser: I have not gone over that one this morning. We have gone from—

Mr. R. F. Johnston: It was just (a) and (b), and now we are down to (a), (b), (c), (d) and (e).

Mr. Tomlinson: There are a number of different permutations and combinations you can get into, and we felt that the version which is in there now did not deal clearly with all of them, so we decided to set them out in five different situations.

Mr. Chairman: Section 10 now, which is page 22 of the bill.

Mrs. Carrier-Fraser: This is again striking out "elementary."

Mr. Sterling: Can we go back to subsection 9(5)? This one deals with where a parent can demand that their children go to school. Is that correct?

Mrs. Carrier-Fraser: At the secondary level; open access at the secondary level.

Mr. Sterling: Does it deal with the situation where there are split parents who are of different religions and want their kids to go to different systems?

Mrs. Carrier-Fraser: Yes. Because there is open access of the secondary level from one sector to the other, for instance, the parents could be paying their taxes to the Catholic school sector but requesting the child go to the public school sector for secondary education. The Catholic sector would pay, in this case, the tuition fees to allow the child open access to the secondary program within the public sector.

Mr. Sterling: On the French board?

Mrs. Carrier-Fraser: That is right.

Mr. Sterling: Would it cross over into the other boards of education?

Mrs. Carrier-Fraser: Yes.

Mr. Chairman: Is that OK, Mr. Sterling?

Mr. Sterling: Just a minute. At the elementary level, how is that all going to work out?

Mrs. Carrier-Fraser: That comes in a later section.

Mr. Chairman: I was going to move to subsection 17(1), which is page 30 of the bill.

Mrs. Carrier-Fraser: Again, it is the same wording we were working with at the beginning of the text. The definition of "public system" is really a public board dealing with both elementary and secondary.

Mr. Chairman: Is that OK? Subsection 23(3), which takes us to page 38, I think.

Mrs. Carrier-Fraser: "A sector shall not sell, lease or otherwise dispose of a building...other than to the other sector...." Before, we did not put that provision in there that allowed disposal of a building between sectors. It was between boards. We felt it was essential that there be some clause in there indicating that there could be a change of property between the two sectors in this case.

Mr. R. F. Johnston: What interested me about is that it was unless "the sector has obtained the approval of the minister." I want to get a little bit about how that works. Is that for all transfers that this takes place?

Hon. Mr. Ward: Yes. Any disposal has to meet the provisions as set out by disposal policies, but there may be circumstances that arise that could be considered. This is not any different from what would apply to any school board. I guess what this is doing is giving the other sector the first shot.

Mr. R. F. Johnston: The first shot at it, and with the minister having some control over that as well.

Mrs. Carrier-Fraser: As the ministry does now.

Mr. R. F. Johnston: And it had to be written in specifically again, even though it is in the other legislation.

Mrs. Carrier-Fraser: Yes, because the Education Act applies to boards. In this case, we wanted to make sure it also applied to the sectors.

Mr. R. F. Johnston: Again, this is a matter of power to the sector on the same principle in terms of the Constitution?

Mr. Tomlinson: This was partially to ensure protection of the Roman Catholic sector, that the public sector would not go and sell its wares to somebody else.

Mr. Chairman: OK. Any further discussion of subsection 23(3)?

Mr. Sterling: Does that cross-exchange of schools exist between the two English boards? Is there the right of first refusal?

Hon. Mr. Ward: No. I guess on the right of first refusal, I believe those two are coterminous for the separate board. But within that is also the fact of the utilization for educational purposes by either another board or even a community college or university also in the disposal policy.

Mrs. Carrier-Fraser: In this case, what would happen is the sectors, before disposing, selling or leasing a building, would have to offer it first of all to the other sector, then to the boards and then to—

Hon. Mr. Ward: Mr. Sterling's question is between the Ottawa boards and the Carleton boards. For instance, if Carleton wanted to dispose of a school before—

Mrs. Carrier-Fraser: It would have to offer it.

Hon. Mr. Ward: —offering it to sale, it would have to offer it to Ottawa.

Mrs. Carrier-Fraser: Yes, that is right.

Hon. Mr. Ward: And that exists in every situation.

Mr. Sterling: I guess my concern is how it fits in with the French-language board. Are they dovetailed as well?

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Hon. Mr. Ward: Yes. They tie into the same disposal policy. The only thing this amendment is doing is saying that in the pecking order, or whatever you want to call it, of who gets an opportunity for a right of refusal or whatever, the other sector moves on to the list.

Mr. Sterling: Are they in the same pecking order, though? Let me give you an example. The Carleton Board of Education has a surplus school in Orleans and wants to sell it. It will not be for a long time, but that is why I use the example.

Hon. Mr. Ward: Sure.

Mr. Sterling: We are just trying to get one there. If it had a surplus school in Orleans, who would come first in terms of the refusal? Would the Carleton separate school board come first? Would the French-language—

Mrs. Carrier-Fraser: Sector.

Mr. Sterling: No, listen. Carleton Board of Education, English—

Mrs. Carrier-Fraser: It offers it to the boards.

Mr. Sterling: —has a school for sale. What is the lineup?

Mrs. Carrier-Fraser: Coterminous boards.

Mr. Sterling: So the Carleton separate school board gets first crack.

Mrs. Carrier-Fraser: Yes.

Hon. Mr. Ward: And then the other boards.

Mrs. Carrier-Fraser: The Ottawa-Carleton French-Language School Board also would be part of the list.

Hon. Mr. Ward: The Ottawa boards and the Ottawa-Carleton French-language board.

Mr. R. F. Johnston: Now they elect the boards.

Mr. Sterling: Yes; that is what I want to determine.

Hon. Mr. Ward: I will bring you a roster.

Mr. Beer: Who gets first crack?

Mr. Sterling: No. What I am saying is—1

Hon. Mr. Ward: I know what you are saying. In what order?

Mr. Sterling: What I am saying is that the likelihood is that the francophone community will come at the tail end.

Mrs. Carrier-Fraser: Not necessarily, because in areas such as Hamilton-Wentworth, for instance, or where the Roman Catholic board is coterminous to two public boards, the same thing would apply. They are offered simultaneously to the coterminous boards and then negotiations are undertaken after that.

Mrs. O'Neill: As I understand the Education Act, it is offered to all boards in the area.

Mrs. Carrier-Fraser: That is right. Let's say if the Carleton board or the Carleton separate board had surplus buildings, they would be offered to the boards and then negotiations would take place. The minister would have to approve final lease or sale of the building, based on need and everything else. There is always an analysis made at the end before it is transferred over to any board.

Mr. R. F. Johnston: So if they all want it, it will land on the minister's desk and he will have to deal with it.

Hon. Mr. Ward: Yes.

Mr. R. F. Johnston: I like that.

Mr. Chairman: Before we go on, if I could explain what has happened here, our clerk and deputy chair have gone to the Board of Internal Economy to argue for our budget. Lynn Mellor is the pinch-hitter in this case. Welcome.

Perhaps we could go on now to section 26, which is page 40 of the bill.

Mrs. Carrier-Fraser: Simply added to this clause are a few words saying "Subject to this act, the Roman Catholic sector has all the powers and shall perform all the duties that the Education Act confers or imposes on a secondary school board."

Mr. Chairman: The next ones I have are sections 35 through 37, which we mentioned briefly before.

Mrs. Carrier-Fraser: I will ask Mr. Tomlinson to speak to this one.

Mr. Tomlinson: This is just to replace what is now in Bill 109 relating to composition of the board. Originally, it was all spelled out in the bill, because Bill 125 had not been passed. Bill 125 has now passed, and we can shorten it a great deal by just referring to Bill 125. That is what this replacement motion would do.

Mr. R. F. Johnston: There is just one thing I want to check while I think of it. The minimum numbers are the same.

Mr. Tomlinson: As in Bill 125?

Mr. R. F. Johnston: As in Bill 125. Are the ones in Bill 109 the same minimum numbers we have in Bill 125, the same formula? I do not think so. In the end, we changed Bill 125. Oh, yes, the minimum was the same; it was the maximum that we changed with my amendment.

Mrs. Carrier-Fraser: So in this case, you would have eight as the minimum representation on the public sector.

Mr. R. F. Johnston: That does not change. There is no danger of anything like that being changed.

Mr. Tomlinson: The minimum for the total board is the same.

Mr. Chairman: OK. Can we move to subsection 38(5)?

Mrs. Carrier-Fraser: What we have done here is change a word in this clause, saying the financial statements for a sector "shall include" instead of "shall indicate." It clarifies the intention.

Mr. Chairman: That is at the bottom of page 56. Subsections 40(2a) and 40(2b) are on page 58.

Mr. Tomlinson: Essentially, this motion deals, first of all, with the new subsection 40(2a) slightly differently with estimated expenditures that relate to maintenance. It deals differently with them than with most other expenditures.

The basic rule for most expenditures is that the estimates of the full board are allotted to the sectors depending on student enrolment, but any expenses of the full board that are related to maintaining buildings of the sector, rather than just being totalled up and allotted according to the number of students in each sector, will go to the sector for which they were made.

That is what the subsection 40(2a) does. Subsection 40(2b) just indicates that you do a separate allotment of your estimates for elementary and for secondary school purposes.

Mr. Sterling: What about the debenture costs and that kind of thing?

Mr. Tomlinson: They normally would not have debenture costs for maintenance expenditures. That would be more for capital. I do not think you get into that. These have to do with the costs of maintaining.

Mr. Sterling: I mean maintaining the sector's building.

Mr. Tomlinson: I think that might be different. I think construction of buildings and so on would be done by the sectors.

Mrs. Carrier-Fraser: With debenture cost, it is exclusive jurisdiction. As specified in section 4 of the bill, it is quite clear that the issuing of debentures is a responsibility of the sectors and remains a responsibility of the sectors.

Mr. R. F. Johnston: If we are looking at the practical situation at the moment in Ottawa for the coming years, whom does this protect and from what, just so I get an idea of how this works?

Mr. Tomlinson: It protects the Catholic sector, in the sense that it is not going to have to pay for maintaining the public sector's buildings possibly, if it happens to have a lot more students than the public sector does.

Mr. R. F. Johnston: So it protects the system with the large number of students and less financial ability to pay. Is that it?

Mrs. Carrier-Fraser: It ensures, basically, that the expenditures incurred for the maintenance of the sector's buildings, premises, furniture and equipment are allocated to that sector. So whoever incurs the expenditures, pays for them. Before, it was not clear. What could have been done is that all expenditures related to maintenance and everything else would have been put together and then divided per capita, which, it was felt, was not fair.

So what is happening in this case is that whoever incurs the expenditures, pays the bill.

Mr. R. F. Johnston: Just from the other side, though, there has been a financing concern around the whole law in terms of the effects on the French side of things. I guess I am wondering if this might stick them with higher costs than they have been expecting because their numbers might be less and therefore they would not be—

Hon. Mr. Ward: I do not see that as being tied to the issue at all. It is just clearly a case of whichever sector incurs the expenditures will foot the bill.

Mr. Sterling: Could I ask the minister this? When you are figuring out your various grants to the board, is it to the board or to the sectors of the board?

Mrs. Carrier-Fraser: The costs for the premises and maintenance, etc.?

Mr. Sterling: Presumably, this board will be receiving substantial moneys from the Minister of Education. Does the public sector of the francophone board get a certain allocation from the minister and the Roman Catholic separate get a—

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Mr. Chairman: Could you just speak a little bit more into the mike?

Mr. Sterling: Yes, excuse me.

In other words, is your pot divided into two and, therefore, if there is a greater need, as Mr. Johnston has pointed out, for the board with the fewer students, do you take that into consideration when you make your grant?

Hon. Mr. Ward: Again, the grand calculations, I think we have indicated, will be on the basis of current expenditures within that region and will take into consideration the enrolments of each sector and what we have there. It will not be done through the normal general legislative grant regulations, if that is your question.

Mr. Sterling: I guess the problem is that once you start splitting

out the costs, as this amendment does, then the less populated part of the joint board will be the more vulnerable, because you will have fewer students and usually that equates to higher maintenance possibilities and that kind of thing.

Hon. Mr. Ward: I do not see that.

Mr. Sterling: I hope I am wrong. The public sector has a lot of concerns about how it is going to be financed. I wonder whether or not you are going to just raise more of an aggravation there in terms of—

Hon. Mr. Ward: I guess the concern is that without that the potential of transferring costs incurred by one sector over to another has to be as great. That in itself creates a problem.

Mr. Sterling: I agree, but it depends on how the money comes down from the ministry too. If the ministry comes down with an overall grant to the joint board and then the trustees sit there and make the division of this money, and if it is divided on the number of pupils that the board has overall, and 90 per cent of the pupils are in the Roman Catholic sector and 10 per cent are in the public sector, then the difference in terms of a situation like this could be somewhat significant.

Mr. Allen: Perhaps on that point, because it has been raised and not necessarily that it relates in our minds exclusively to this particular amendment, you could run over with us, very briefly, how the GLGs relate to the two sections and how the allocation formula functions, because it is quite clear that the way in which commercial-industrial assessment is accessed under this bill is somewhat different, is it not, for one section of the board and another? That is to say, the separate school formula for accessing commercial-industrial assessment applies to the whole board, or is it just to the Roman Catholic section?

In other words, just as the grants are very substantially different in public school and separate school settings, because of the differential access to commercial and industrial, are there some other factors, including that factor, which possibly make the per capita, the per student grant different for one section of this board and for the other?

Hon. Mr. Ward: I do not believe so. The intent was that we would fund this, not through the normal GLG, and I think that is understood, but rather on the basis of the expenditures that had taken place within the community on a per capita basis and that this would be the interim financing mechanism.

Mr. Allen: So you are not starting with the old formula and then adding on? You are working out a formula on the basis of the expenditure in the region to maintain a certain level of education and then you are transferring that figure to this board?

Mrs. Carrier-Fraser: To the sectors.

Mr. Allen: But with no differentiation on a per student basis in terms of which section the student happens to belong to?

Mrs. Carrier-Fraser: The revenue generated by the board will be given to the sectors, not to the full board; so the commercial and industrial tax that is raised by the Roman Catholic sector through the normal processes

we have now will be allocated to the Roman Catholic sector. It would have to be designated by the—

Mr. Allen: Otherwise, the public school access to commercial-industrial will be transferred to the public sector from the French board?

Mrs. Carrier-Fraser: Whatever revenue they get; yes, if it is designated by a corporation.

Mr. Allen: Then how does the equalization happen between those two? You must have an additional formula if you want it spent equitably on a per student basis on both sides of the board.

Mrs. Carrier-Fraser: Once the estimates of the cost of education within the four boards are known for 1989, we will use that to ensure that the pupils coming from the Roman Catholic sector will get all the education they would have had if they had remained where they were, and the same thing would apply for the public education sector in regard to the two public boards in that area.

Mr. Allen: But there is not going to be internal equality, by the sound of it. Per student expenditure is going to be different, because you are measuring the public board's side by the public anglophone board expenditures and you are measuring the French-section expenditures and their equitable level with the anglophone separate school expenditure level. Are you not going to end up internally with two different levels of per student expenditure inside the one-board structure?

Mr. R. F. Johnston: I wonder if the easiest way to deal with this today would be to try to have, as part of what we deal with next Monday, a briefing on how the financing will go with this, just a short one.

Hon. Mr. Ward: I think that would be better, because we are getting into the whole—

Mr. Allen: It is a pretty arcane subject we are getting into for all members of the committee. It would be very useful for us to do a separate runthrough on that.

Mr. R. F. Johnston: It is very important stuff, clearly, to people who feel they may be ending up with less than they have presently. We need some kind of notion about how this equalization process might work, if it is there to work, and what the linkages are as well to any notion of ceilings which are presently there under general legislative grants.

I just sense that in trying to deal with the internal problems of developing this new sectoral approach in Ottawa, we may in fact do things which will make other boards outside upset about how things are managed. It would be very interesting to see how this will compare with what presently exists in Ottawa when it finally results in the sectoral approach we have.

Mr. Chairman: Are the members of the committee agreeable to that? Minister?

Hon. Mr. Ward: That will be all right.

Mr. Sterling: I would really appreciate two or three pages on exactly how they are going to be funded and, once the funds get into the overall board, how they divide down into the two sectors. If you can show me even schematically how that is going to be done, I would appreciate it.

Hon. Mr. Ward: We will see what we can do.

Mr. Chairman: Any further discussion of subsections 40(2a) and 40(2b)?

We now go to subsection 40(3), which is on the same page of the bill, page 58.

Mrs. Carrier-Fraser: Simply, what we have done here is— Before, we referred to subsection 2, and since we have added subsections 2a and 2b, we are just adding those numbers into the section.

Mr. Chairman: Subsections 40(5) and 40(6). The next three amendments are on page 60.

Mr. Tomlinson: These are to deal with concerns that some of the Catholic groups had that the present version of Bill 109 takes away the traditional separate school board taxing powers from the Roman Catholic sector. This takes out what we have in the present version and puts in essentially what separate school boards have as far as taxation goes.

The present version in Bill 109, for example, would have required the Roman Catholic sector to adhere to the basic apportionment rules of a divisional board, and it would not have been able to levy its own taxes or set its own rate. It would have just requested amounts to be raised by the area municipalities in Ottawa-Carleton. That is all taken out in order to allay their concerns, and the separate school board taxing powers are, in effect, put in for the Roman Catholic sector and for the public sector as well.

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Mr. R. F. Johnston: I know you want comments on these things, but looking at this and several of the others we have seen today, these clarifications of the powers of the sectors really make it clear to me that the previous bill, by itself, would have been really open to challenge with these kinds of things not being put in, especially when you explain the different approach that would have to be taken under the old bill.

Mr. Sterling: Are we not getting pretty close to creating two separate boards here? In effect, with these amendments, in the final analysis, what is going to be left are two francophone boards in Ottawa-Carleton.

Interjection.

Mr. Chairman: Subsection 41(2), same page.

Mrs. Carrier-Fraser: What is being done here is that we have added the word "unpaid," and it is to make it clear that the savings per sector resulting from a strike of employees of the full board are to be credited to the sectors in the appropriate proportion.

Mr. Chairman: Section 42, still on page 60.

Mrs. Carrier-Fraser: Go ahead, John, if you have additional information on that.

Mr. Tomlinson: This is just part of the previous amendment I described. In this case it permits the public sector to determine its own mill rate. It exempts it from the application of the apportionment regulation.

Mr. R. F. Johnston: Am I looking at the right one? Is this section 42 that we are just striking out, which talks about getting rid of chief executive officers, which I am always in favour of, of course?

Mr. Tomlinson: Yes. The essence of section 42 is that it tells the public sector to use the apportionment regulation that divisional boards use and the executive director of that public sector is going to be treated as though he were the chief executive officer of a divisional board. Because we are giving all separate school taxing powers to the Roman Catholic sector, it was felt that equivalent powers should be given to the public sector, so this was taken out.

Mr. Chairman: Subsection 45(2), page 62.

Mrs. Carrier-Fraser: What we have done is to remove subsection 45(2) and substitute for it, "Each sector shall determine the rates to be levied for its purposes." The public sector as well as the Roman Catholic sector determine their own mill rates.

Mr. Chairman: Subsections 60(10) through 60(12), page 74, I think.

Mrs. Carrier-Fraser: These new subsections simply ensure that the decisions of the arbitration board, as specified within the dispute resolution mechanism, are enforceable by filing such a decision in the office of the registrar of the Supreme Court.

Subsections 60(11) and 60(12) provide for such filing by either sector where the sectors have been the parties to a dispute. The decision so filed is then enforceable as such as a judgement of the Supreme Court.

Mr. Chairman: Subsection 61(4).

Mr. R. F. Johnston: Could we just go back to the previous one?

Mr. Chairman: Sorry.

Mr. R. F. Johnston: I do not think arbitration ones are ever as easy as they look, but why was it necessary to add them on top of what we had? Let me ask it that way, just so I have a clear idea.

Mr. Tomlinson: In cases where, in particular, there is a dispute between the sectors—but it could happen with a dispute between sectors and other parties as well—the arbitrator's decision, if it was intended to be final, if there was some disagreement and one of the parties just did not want to carry out the decision of the arbitrator. It was felt that there should be a legal mechanism for enforcing it, so specific provisions were put in for filing it and saying that it would be enforceable in the same manner as a judgement.

Mr. R. F. Johnston: Was there some concern it would not have been consistent with the Charter of Rights otherwise to have that arbitration final?

Mr. Tomlinson: This one really, at least in our minds, did not have much to do with the charter. You may know something we do not know.

Mr. R. F. Johnston: No, never about these things.

Mr. Chairman: Always honest.

Mr. R. F. Johnston: Why do I say "about these things"? I do not know why I qualify it at all. But you just decided you wanted a Supreme Court reference possibility if somebody is not happy.

Mr. Tomlinson: No, it would not go for a further decision by the Supreme Court. As an administrative matter, it would just be filed there so that then you could get the sheriff to enforce it in the same way as he enforces a Supreme Court judgement if one of the parties does not want to carry it out, that is all.

Mr. R. F. Johnston: I see.

Mr. Tomlinson: It is the same sort of provision that we have in Bill 30.

Hon. Mr. Ward: The decision is filed with the court if it is defied.

Mr. Chairman: Subsection 61(4) takes us to page 76. The next four amendments are on that page.

Mr. R. F. Johnston: Is that first one like Bill 30 in the sense that the arbitration goes to you?

Hon. Mr. Ward: No, but the similarity is in terms of a final decision being filed with the court.

Mr. R. F. Johnston: Where is the minister in this arbitration process compared with Bill 30—not this particular minister, of course, but the minister in general? Does he not want this to occur here? Did he have enough of Bill 30's arbitration process so he does not want to be involved in this?

Hon. Mr. Ward: I pass on that.

Mr. R. F. Johnston: There is always something hidden in arbitration.

Mr. Allen: Does this respond in some measure to the concern we heard in Ottawa that the process of grievance, appeal and arbitration be the same for between the sections and the French board and the coterminous boards? Do you not recall there was some problem that the procedures were somewhat different for those two lines of grievance and ultimate determination of appeal and arbitration? Does this section speak to that at all or is there another amendment?

Mrs. Carrier-Fraser: It does not change the procedures in this case. It is simply the whole administration process of filing.

Mr. Allen: This is just laying on an additional standard procedure for everybody which was not there before.

Mrs. Carrier-Fraser: Yes. The next amendment is simply to ensure that if there were school transfers—

Mr. Chairman: Is this subsection 61(7)?

Mrs. Carrier-Fraser: Subsection 61(4). The date in the bill itself was, "All of the personal property of an English-language board that on the 31st day of January 1988." What we have done in here is simply to say, "All of the personal property of an English-language board that was used at any time during the period from the 31st day of January, 1988, to the 31st day of December, 1988."

Mr. R. F. Johnston: Great. Does that deal with the problems of that one particular school, Genest? No.

Mrs. Carrier-Fraser: It is not just the schools that were being used on that specific day; it is other possibilities of transfers that might have occurred during that period of time.

Hon. Mr. Ward: I think the one Mr. Johnston is referring to comes up later, the next one.

Mr. Chairman: Subsection 61(7), still page 76.

Mrs. Carrier-Fraser: This one allows for recognizing agreements that might be reached between the English-language boards in respect of buildings made prior to the establishment of the French-language board. This will allow the agreements concluded in 1988 or before respecting the transfer of Ecole secondaire Belcourt, Laurendeau or ones of that nature.

Mr. Chairman: Subsection 61(8).

Mrs. Carrier-Fraser: This amendment confirms the intent that the transfer provisions as envisaged in section 61 are to be done and are not to be subject to an agreement by a double majority vote of both sectors. If there is an agreement in Ottawa, let's say between the French sector and the English sector, that agreement remains. It does not have to be by double majority of the sectors once it is done.

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Mr. Chairman: Next, subsections 61(9) through 61(11) at the bottom of page 76.

Mrs. Carrier-Fraser: This subsection specifies that the personal property attached to the school sites to be transferred under section 61 is allocated to the sector to which the building containing the said personal property is transferred.

Mr. Chairman: Discussion? Subsection 62(3). Sorry. Richard Johnston.

Mr. R. F. Johnston: That is mandated, then, in terms of shifts of population? Otherwise, I do not understand that.

Mrs. Carrier-Fraser: That is right, and it has to be a resolution by both. It is like there is a double majority vote by each sector to reallocate the school sites to be used. Then, if it does not work out, it refers to the dispute resolution mechanism.

Mr. Chairman: Now subsection 62(3), page 78.

Mrs. Carrier-Fraser: There was a clause that said, "In choosing the assets and reserves to be transferred...an English-language board shall take into account all the French-language board's requirements for establishing, maintaining and operating a school board." The boards in that area, the planning committee, etc., requested that we remove that because it said it attempted to define what was an equitable contribution for each English-language board to transfer to the French-language board. It was judged by the parties in the Ottawa-Carleton area that it was more an obstacle to reaching an agreement than a help. It permits local negotiators to determine what is applicable. If there is an agreement between the French-language sector and the English-language sector of a board that the assets being transferred are what they have agreed to, then that stands within the same board.

Mr. Chairman: Discussion?

Mrs. O'Neill: I do not think they are are saying that particular one. I think there were very strong local feelings. I think what Mariette has said is very true. It seemed that it was so nebulous to be going into something that was such a pioneer effort and to be trying to determine the needs of a board that did not yet exist that it was really causing a lot of trouble locally. It seems to be a very wise move.

Mr. Chairman: Subsection 62(7), still on page 78.

Mrs. Carrier-Fraser: With this one there is a part added to allow the French-language education councils as they exist right now to refer a dispute under the section to the languages of instruction commission after August 31, 1988, if no resolution is passed. If no agreement is reached and no resolution is passed until the new board is established, the French-language education council can refer the dispute to the languages of instruction commission.

Mr. Chairman: OK. New subsections 62(9) through 62(15) at the bottom of page 78.

Mrs. Carrier-Fraser: The new subsection 9 here specifies that the assets and reserves to be transferred under section 62 are allocated to the sector of the same denominational nature as the board transferring the assets and reserves. OK?

The next one addresses a constitutional concern. Each sector judges, then, whether the assets and reserves transferred to it represent an equitable contribution or not. Then clause 62(9)(b) is no longer required, because we deleted subsection 62(3).

Mr. Chairman: Discussion? I think the next subsections are 63(2) and 63(3) at the bottom of page 80 or the top of page 82.

Mrs. Carrier-Fraser: These posed problems in interpretation and needed to be clarified. These will be further clarified when we get to section 77. We are simply removing them from here and will address them later on when we deal with new subsections 77(3) and 77(4). The source in here was the Ministry of Labour and the employee trade unions in the Ottawa-Carleton area. It was at their suggestion that we are bringing this amendment forward.

Mr. Chairman: Subsections 66(1) and 66(2); page 84.

Mrs. Carrier-Fraser: From what was a joint responsibility of the English boards and of the French-language board, this amendment separates the responsibility in respect of employees not designated in section 65. It provides for each English-language board to determine its redundant employees and it provides for the French-language board to determine the number of positions it has available.

Mr. Chairman: Discussion? Subsection 66(3); page 86.

Mrs. Carrier-Fraser: All we are doing here is putting this in the plural instead of the singular, which makes it grammatically accurate because we are referring to agreements.

Mr. Chairman: Subsection 66(5); same page.

Mrs. Carrier-Fraser: It eliminates the inconsistency we had with the following subsection 66(6). If notice has to be given by March 1, it is necessary to have made determinations on selections by the last day of February. It seems logical anyway.

Mr. Chairman: Subsection 66(15); bottom of page 88.

Mrs. Carrier-Fraser: Again, it is for consistency's sake; it is to be consistent with the change brought to subsection 66(1) previously.

Mr. Chairman: That takes us to a series of amendments on page 90; subsection 66(16).

Mrs. Carrier-Fraser: As to this amendment on subsection 66(16), when we strike out "and (15,)" it ensures that no negotiated collective agreement in Ottawa-Carleton can render inoperative the selection and transfer of staff provisions. If there is a new negotiated agreement, staff provisions established in subsection 66(1) still remain operative.

Mr. Chairman: Just below that is subsection 67(1).

Mrs. Carrier-Fraser: It is again plural instead of singular, to be more precise.

Mr. Chairman: And below that, subsection 67(3).

Mrs. Carrier-Fraser: Simply what we have used here is, "The relevant sector or the relevant English-language board," instead of "French-language board," which was not clear enough. It makes it more precise.

Mr. Chairman: Subsection 67(4).

Mrs. Carrier-Fraser: It is plural again instead of singular, for more precision.

Mr. Chairman: Subsection 67(7).

Mrs. Carrier-Fraser: This amendment is an addition to give effect to the transfer of employees selected by the agreement referred to in subsection 66(2) and to ensure that the employment teaching contract or employment relationship is transferred to and is the obligation of the French-language

board. It was not clear before. We knew contracts were transferred, but here we state precisely that these become the responsibility of the French-language board.

Mr. R. F. Johnston: Of passing importance to the odd worker, I would think.

Mr. Chairman: Subsection 67(8) is also new.

Mrs. Carrier-Fraser: This amendment makes it clear that in each of 1989, 1990 and 1991, an English-language board shall only hire employees who are redundant in Ottawa-Carleton unless there is no such qualified employee to fill the vacancy. Before, the obligation was strictly on the French-language board and not on the other boards. In this case, we make sure that they look within the region before going outside.

Mr. R. F. Johnston: For how long?

Mrs. Carrier-Fraser: For three years.

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Mr. Sterling: How does that affect the present situation in Ottawa-Carleton, in terms of English-language teachers crossing borders between the Ottawa Board of Education and the Carleton Board of Education and the Ottawa separate board and the Carleton Catholic board? Does that change the situation with regard to hiring?

Mrs. Carrier-Fraser: Do you mean if they apply for a position to work for another board after this board is established? First of all, let's say the Carleton Roman Catholic Separate School Board had positions to fill. The first thing you have to do is post and advertise within the region, in this case.

Mr. Sterling: I know that is what this act says.

Mrs. Carrier-Fraser: That is right.

Mr. Sterling: But what is it now?

Mrs. Carrier-Fraser: Now it is the normal procedure that applies across the province. If you need staff, you advertise and fill the positions, except if you have lower enrolment because of Bill 30. Then there are provisions, which work out in this case, with redundancy—

Mr. Sterling: So it does change the situation with regard to the two Carleton boards in particular. They are obligated under this to hire Ottawa board people.

Hon. Mr. Ward: Redundant.

Mrs. Carrier-Fraser: Redundant people caused by the creation of this.

Hon. Mr. Ward: Redundancy created by the legislation was dealt with by providing employment opportunities.

Mr. Sterling: But is this just a redundancy as a result of this legislation or is it any redundancy?

Mrs. Carrier-Fraser: Just as a result of this.

Mr. Sterling: Where does it say that?

Mrs. Carrier-Fraser: That will be in one of the previous sections. What we had before still applies, "The agreement made in 1989, 1990 and 1991 under subsection 66(2) shall identify the employees of each English board for whom there is no position on the English-language board or the French-language board consequent upon the formation of the French-language board." That is stated in the bill.

Mrs. O'Neill: I was going to say that the boards have memorandums of understanding right now under Bill 30, and this will be in addition to those.

Mr. Chairman: Further discussion? Subsection 69(1); page 92.

Mrs. Carrier-Fraser: This amendment makes it clear that section 69 is applicable only until such time as a new collective agreement or board policy, as the case may be, is arrived at between the French-language board and each of its groups of employees. Otherwise, any employee could claim that his or her old collective agreement still applied. This was proposed by the teachers' federation, the trade unions, the Ministry of Labour, etc.

Mr. Chairman: Subsection 70(1) takes us to page 96.

Mrs. Carrier-Fraser: This amendment clarifies possible confusion between the definition of "seniority" in subsection 63(1) and the use of "seniority" in section 70, where the reference is to the applicable seniority list.

Mr. Chairman: Subsection 70(3) on the same page.

Mrs. Carrier-Fraser: This amendment ensures that English-language board employees who may be redundant in any of 1989, 1990 and 1991 have first rights over any position available within the French-language board; of course, if they hold the necessary qualifications. That was proposed by the English-language sectors of the Ottawa-Carleton boards.

Mr. Chairman: Subsection 75(2) is a new subsection, at the bottom of page 100.

Mrs. Carrier-Fraser: This new subsection renders the regulations made under section 136-1 of the Education Act inoperative. It forces the sector to reach an agreement on the transfer of employees in the event of a shift in enrolment from the public sector to the Roman Catholic sector after the establishment of a French-language board.

Mr. Chairman: Clause 76(1)(b); page 102.

Mrs. Carrier-Fraser: This is simply a housekeeping amendment to make the meaning of "public board" consistent with the definition found in the Education Act. Similar amendments were brought to this act as we have gone through these.

Mr. Chairman: Subsections 77(3) and 77(4); new subsections at the bottom of page 104.

Mrs. Carrier-Fraser: These new subsections replace what was formerly subsection 63(2). If you remember, I said when we read subsection 63(2) that we would be amending section 77. It simply clarifies the intent and meaning and was proposed to us by the Ministry of Labour to ensure that employee trade unions were protected.

Mr. Chairman: Are there any other questions or observations with regard to this briefing?

Mr. Sterling: I noticed the ministry staff reading from a document, obviously, which was probably equivalent to a compendium we get with the act. I wonder if we could have a copy of that document.

I also ask that you try to get Hansard to produce the minutes of this meeting immediately so that we can forward these on to the various sectors that are involved in this, so they can have an opportunity to try to understand what the amendments mean.

Mr. Chairman: I will be glad to do the second of those things. Minister, would you go with the first?

Hon. Mr. Ward: No problem.

Mr. Chairman: Are there any other points or questions with regard to Bill 109?

Mr. R. F. Johnston: I certainly hope the minister is going to reconsider putting himself back in the arbitration process. I would feel badly if he were not there.

Mr. Chairman: With regard to Bill 109, then, la prochaine réunion du Comité permanent concernant le projet de loi 109 aura lieu dans cette salle, le lundi 20 juin, après la période des affaires courantes, c'est-à-dire vers 15h30.

Mr. Allen: Will we be receiving the summary of financial arrangements prior to coming back to the amendments?

Hon. Mr. Ward: I do not know whether we can do it prior, Richard, but we will try to make some arrangement at least for a presentation very early in the week; hopefully the documentation, if not a presentation from people in finance.

Mr. Chairman: You will recall that we meet tomorrow in regard to Bill 100. If there is no further business, the committee is adjourned.

Mrs. O'Neill: Are there at this moment just two presenters tomorrow or have others come in?

Mr. Chairman: Yes, there will be two presentations and then we will proceed to line-by-line.

The committee adjourned at 4:57 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION AMENDMENT ACT

TUESDAY, JUNE 14, 1988

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitutions:

Ballinger, William G. (Durham-York L) Mrs. LeBourdais

Sterling, Norman W. (Carleton PC) for Mr. Jackson

Wildman, Bud (Algoma NDP) for Mr. R. F. Johnston

Clerk: Carrozza, Franco

Staff:

Williams, Frank N., Legislative Counsel

Witnesses:

From the Association of Municipalities of Ontario:

Brick, Doris, President and Councillor, County of Peterborough

Clark, Stephen, Vice-President and Mayor, City of Brockville

Hopcroft, Grant, Chairman, Fiscal Policy Committee, Vice-President and
Alderman, City of London

Rice, Bill, Past Administrative Vice-President and Chief Administrator, City
of Sudbury

Franklin, Ben, Mayor, City of Nepean

From the Ministry of Education:

Ward, Hon. Christopher C., Minister of Education (Wentworth North L)

Bishop, Wayne E., Education Finance Consultant

Lenglet, Brian, Education Finance Policy Analyst

From the Association of Large School Boards in Ontario:

Nelson, Fiona, President

Cameron, Marilyn, Member, Legislation and Finance Committee; School Trustee,
Carleton Board of Education

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, June 14, 1988

The committee met at 3:41 p.m. in room 151.

EDUCATION AMENDMENT ACT

Consideration of Bill 100, An Act to amend the Education Act.

Mr. Chairman: We are here today to consider principally Bill 100. We have with us the Minister of Education (Mr. Ward).

Ladies and gentlemen, before we begin, for the benefit of the committee, I would remind you that we return to Bill 109 next Monday. Depending on how today's proceedings go, it may well be that Thursday will be a rest day for us.

For the benefit of those delegations here today, these proceedings are being televised. They will be broadcast on the legislative channel on Friday morning. If there are people in your organizations who are interested, you might mention that. I believe they begin at approximately 11 a.m. We could provide you with that information if you wish to contact us.

Also for the delegations, the minister and his staff who are here with us are guests of the committee. Although we would like the minister to speak and engage in dialogue with you, it is the committee that you are making the presentation to. We would be grateful if you would be brief and if you would leave reasonable time for questions.

Before you begin, I would like to welcome the representatives of the Association of Municipalities of Ontario here, particularly Doris Brick, reeve of Ennismore, among many other things. Mrs. Brick, it is a pleasure to have you here. Before you begin, could each of you give your name and affiliation clearly into the mikes for the benefit of Hansard and the translators? Then you may begin.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

Mrs. Brick: I will start. Doris Brick, president of AMO.

Mr. Hopcroft: Grant Hopcroft, vice-president of AMO.

Mr. Clark: Stephen Clark, vice-president of AMO.

Mr. Rice: Bill Rice, past administrative vice-president of AMO.

Mrs. Brick: Mr. Chairman, Minister, members of the committee, we do have some other people with us today who will not be speaking but are here as our guests. I ask them to stand and be acknowledged as I call their names.

We have Mike Larocque, treasurer of the city of Brockville; Bob Letourneau, treasurer of the city of Nepean; Ben Franklin, mayor of Nepean; and C. M. Beckstead, chief administrative officer from Nepean as well. They are here with us to back us up perhaps in the questions. We will have some comments from them.

We appear before this committee as one level of government addressing another. We represent almost 700 municipalities in the province. Bill 100, An Act to amend the Education Act, is one we do have some concerns with, which we would like to discuss this afternoon and try and respond to your questions, in particular, the loss of a right of appeal. We would urge your committee to listen to the viewpoints which will be put forward. We would like to see some right of appeal in the legislation as it is finally implemented.

We will address the bill on three aspects: the right of appeal; the concept of equalized assessment; and the exclusion of the regions of Sudbury and Haldimand-Norfolk.

I will ask Grant Hopcroft to lead off our presentation and he will address the issue of the right to appeal. Sorry, Stephen Clark is going to address the right to appeal.

Mr. Clark: As the president mentioned, the right to appeal is something our association and municipalities in general feel very strongly about. We feel that way for a very good reason. We believe the taxpayers have a right to have that opportunity to appeal, and certainly that democratic right is something we cherish very dearly.

The process regarding education appeals has gone back as far as 1970, when the city of Nepean launched numerous appeals. Subsequently, I believe in 1984, an Ontario Municipal Board hearing was something that sparked much discussion in terms of the Education Act, particularly section 213, which gave municipalities the right to appeal based on the apportionment levy.

Subsequently, Bill 100 was presented and took away that right to appeal on the apportionment and only gave municipalities and taxpayers, in turn, the right to appeal based on an error in calculation or omission. We believe that as municipalities, on behalf of our taxpayers, we should have an opportunity to discuss and consult and have a dialogue with the government about education and also have the right to bring our views forward to an independent body. Many municipalities have given our association their support to that concept, that we should retain the right to be able to appeal to an independent body.

In terms of my presentation, in my view and on behalf of our association, we believe Bill 100 should be amended to give us that right back. It is a right that has been taken away from us, a right not only for municipalities but a right for school boards and the taxpayers in general.

Mr. Wildman: Do you want questions now, Mr. Chairman?

Mr. Chairman: I am in your hands, Mrs. Brick. Could you complete--

Mrs. Brick: Could we complete our presentation and then respond to the questions?

Mr. Chairman: Very good.

Mr. Hopcroft: On the issue of the equalized assessment, as you are aware, in section 1 of Bill 100, section 213 is to be repealed, and AMO would ask the committee to drop that provision of the bill.

We feel it is very important that there be some basis upon which the factors are calculated. We feel the equalized assessment basis of calculation is a fair and an equitable one.

Although we recognize that there are some deficiencies in the existing system, specifically with respect to the vagueness of the undue burden test, we feel that the fairness and equity in the assessment base is the one that should be adhered to. We would ask that a formula for establishing that be included in legislation and we are fully prepared to consult with the provincial government in that respect to come up with a fair manner of equalizing those factors.

Ultimately, however, the fairness will hinge upon all assessment values across the province being updated to a system which has some equality and has some sameness of value, which there is not at the present time.

Again, we are asking that the repeal of section 213 be dropped in favour of some further study, consultation with AMO and with the school boards to come up with a new formula. We think that the current proposal, as Mr. Clark mentioned, really de-democratizes the process. It removes that appeal mechanism. It removes that element of fairness that we feel has to be there because, in effect, it allows the apportionment factors to be based on any criteria that the ministry feels are appropriate. We feel that could lead to abuses.

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It is not as open a system because it is not subject to that appeal and it could allow a subsidization process to occur through an unfair apportionment system being applied. If there are reasons for subsidizing a particular municipality's board, then that should be done up front through an open and politically accountable allocation mechanism.

We are also concerned that it really is a foot in the door as far as a recommendation of the Macdonald commission that AMO has opposed in the past is concerned, that is, the pooling of commercial and industrial assessment. Although we realize that may not be the intent, it still does open the door, and it really intrudes on a property tax base that municipalities want very much to protect because it is so limited.

I would like to turn this over now to Bill Rice, who will make the last part of the presentation.

Mr. Rice: Notwithstanding our opposition to Bill 100 as drafted, we do wish to comment on section 2. As members would be aware, under section 2 of the proposed legislation, municipalities will be allowed to appeal to the divisional board in instances of errors or omissions. However, in the regional municipalities of Sudbury and Haldimand-Norfolk and other local municipalities in a county where an assessment update has been carried out, there is an exclusion built into the bill.

It appears that the rationale for this exclusion is that municipalities which have undergone a region or county-wide reassessment have common equalization factors and therefore encounter no difficulties in the apportionment process. This may not be the case.

It should be stressed, however, that since regional and/or county boundaries and the school board boundaries are not coterminous in many cases, apportionment calculations are necessary and, as such, errors and omissions in the calculation of apportionments can occur. Specifically in the Sudbury area, the school board boundaries encompass many townships and unorganized areas.

These townships have not been reassessed and have different equalization factors. Other revenue, such as Bell Canada gross receipts and payments in lieu, may also affect the apportionment calculation. Until there is a uniform mill rate and exclusion under section 2, it would appear to be premature.

Mrs. Brick: That gives us some time then for questions that may come from committee members.

Mr. Chairman: Ladies and gentlemen, I have Bud Wildman and Norm Sterling, and then the minister would like to respond. For the benefit of the delegation, this is Mr. Wildman, the member for Algoma. We do not have a sign for him.

Mr. Wildman: I am just substituting, Mr. Chairman, as you know.

Mr. Sterling: I will defer to the minister to go ahead of me.

Mr. Wildman: I was just going to suggest that. If the minister wishes to respond prior to our asking questions, I would be happy to have him do that.

Hon. Mr. Ward: I want to thank AMO for the presentation. It is always delightful to see some familiar faces. I spent some time as part of that organization, and I do want to state on the public record that every one of its conventions is 100 per cent work with very little time for socialization. Certainly, I did enjoy my participation and, as usual, I appreciate their excellent input.

I want to respond briefly to a few of the issues that were raised and perhaps put Bill 100 into context. As the members from AMO may or may not be aware, Bill 100 was introduced at the same time that boards throughout this province were notified that we would be utilizing updated equalization factors for the coming fiscal year.

The members of AMO will be aware that throughout Ontario there exists, still, a hodgepodge of assessment processes. One of the great difficulties I encountered very early during my time as minister in visiting different parts of this province were many, many circumstances that were pitting community against community, because they were for ever challenging each other's database and outmoded assessment methodologies.

Frankly, I think it is fair to say that since 1969 up-to-date and accurate data do exist, from the time the province assumed the assessment responsibility back in the late 1960s, I suppose with great expectation by all of us that there would be some fundamental changes in property tax methods. Since that time, on a voluntary basis, many municipalities have participated in updating their assessment on the basis of what is usually referred to as market value assessment under various mechanisms that exist through various pieces of legislation in the Ministry of Revenue.

If I could speak specifically to some of the points that were raised, I would like to begin with Mr. Clark's point and reiterate that each and every taxpayer in this province still does have the right to appeal his or her assessment. Each year the assessment notices are mailed and available to each and every household; so frankly I do not see this being the denial of an individual taxpayer's rights in any way, shape or form.

The second point I would like to make is that by using up-to-date and accurate data, which are currently available through the Ministry of Revenue and which have been available for quite some time, the calculation of the equalization factors becomes an objective, empirical exercise, quite frankly, and should eliminate a lot of the conflicts and challenges that have gone on between municipalities within board jurisdictions.

Again, the ministry is in the process of making available to each and every school board in this province data which clearly show how the formulae are calculated in each and every school board jurisdiction. If AMO would wish, we will include in the mail-out each municipality as well, so that can be clearly demonstrated for all to see.

The ability and the authority to make those calculations are not embodied precisely in legislation; they are part and parcel of the regulation-making powers that exist in the Education Act and will continue to be established by regulation on a yearly basis.

I am not sure about the point as to how this opens the door to the pooling of commercial and industrial assessment. That was never a consideration, and I am not aware of how this enhances or detracts from whatever may take place in that regard. Frankly, I am not sure that it has any impact whatsoever.

I guess the only other concern I have is that the utilization of the outdated factors over the years has resulted in an inequitable subsidization of some property taxpayers at the expense of others. I think this eliminates backdoor or unintended subsidization of some property taxpayers at the expense of others.

I believe this legislation is necessary. It is part and parcel of what I believe to be a long-overdue reform in the interests of fairness and equity to all of the property taxpayers of this province.

Before yielding the floor, I would point out that I have with me today Brian Lenglet and Wayne Bishop from my ministry, who will be happy to answer all the technical questions that may arise from Mr. Sterling and Mr. Wildman.

Mr. Chairman: Mrs. Brick, I think Mr. Hopcroft had a point. Feel free to—

1600

Mrs. Brick: We would be very happy if the minister would circulate to the municipalities the calculations and factors. That is something I think—at least we would have some idea of where it is coming from and how it is to work.

Grant, do you wish to respond to this?

Mr. Hopcroft: Just on the pooling of industrial and commercial assessment, it was the philosophy behind this step as being, in our minds, a step in the direction of that pooling that we objected to more than anything else. We recognize there is a difference.

Hon. Mr. Ward: I just point out that the philosophy under the old factors was the same as the philosophy under the new. I am not at all certain that the impacts were, though.

Mr. Hopcroft: Certainly we are happy to hear that the manner of calculation will be made available to us.

Mr. Chairman: Could I go back to my rotation then? Bud Wildman.

Mr. Wildman: I appreciate the response of the minister and I am glad to see Mr. Lenglet again. The minister may know that I interrupted Mr. Lenglet's holiday last year to request him to attend a meeting of the municipalities in the Central Algoma Board of Education area because of the problem that we dealing with right here.

I would like to ask, first, of the minister or staff, what number of appeals there have been under section 213. Do you have a number?

Mr. Bishop: There have been two municipalities that have actually reached the Onario Municipal Board: the city of Nepean in its appeal process, and Onondaga did in Brant county. There have been a few who have been able to resolve their enforcement problems at the arbitrator level, without going to the OMB. The clerk-treasurer has been able to resolve them at that level.

Mr. Wildman: Right. Is it possible that the reason there has not been the need for more than those two to go to the OMB and the reason they have been able to resolve their problems through arbitration to the clerk-treasurers was the very fact that there was the option of dealing with the OMB?

Mr. Bishop: That could be possible. There is also the possibility of lack of knowledge that the provision actually existed for the appeal process.

Hon. Mr. Ward: If I could add to that, your question is speculative. I think you would acknowledge that.

Mr. Wildman: Sure.

Hon. Mr. Ward: It is almost a hypothetical one. Wayne may be right. There might not have been much awareness of the provision.

My impression also has been that there has been some reluctance on the part of the OMB to involve itself in this manner. As a matter of fact, I think that reluctance was shown even in the consideration, initially, of Nepean, but eventually the issue was heard and gone through.

There have not been many appeals in the past, but given the fact that one did go through the system and did have an impact, the clear alternative or all of these is just to make the adjustments within the municipalities, which means transferring funds from municipality to municipality within the board's jurisdiction.

I think the success of the community in the Nepean appeal generated an immediate lineup to the OMB for the same kind of exercise. Frankly, given the fact that we were also phasing in these impacts by giving out data that showed variances that may have existed from 1969 values to 1986 values or whatever, the municipality could have insisted on an immediate readjustment without the phase-in. I think the impacts would have been beyond the tolerance level of many property taxpayers in this province, to have to encounter those shifts all at once.

Mr. Wildman: I will not bore you with the details of the Central Algoma situation, but that is exactly what happened in that case.

I really do not understand your rationale. It seems to me if there have only been two that have actually gone to the OMB, even though you anticipate there might be more because of the success of Nepean, it certainly does not sound as if it has been something that has taken up the time of the Ontario Municipal Board or been onerous with regard to the arbitration process.

If that is the case, why not allow them to continue to have that option, just for those few situations where municipalities are not able to work out an agreement among themselves as to what is a fair apportionment? Why not allow them to continue to have that option there, so that if there is an aggrieved municipality or group of municipalities, the OMB can in fact deal with it? I do not quite understand why you are saying it should be removed.

Hon. Mr. Ward: There were two appeals up until the end of last year. Over 70 municipalities since that time have indicated their intention to appeal prior to the updating of the factors. As far as I am concerned, the updating of the factors is a clear-cut case of a problem being ignored that will not go away as long as you ignore it. I think it was time to deal with it. I do not think we needed to have 70, 100, 200 municipalities lining up at the OMB to do battle on outdated assessment data. That is the reason for that decision.

Mr. Wildman: I am wondering if there is any response from the delegation.

Mr. Chairman: I was going to ask that we involve the delegation in the discussion. Mrs. Brick, you can see why I mentioned the minister before we began. When you have a minister here, people tend to talk to him. Would you care to comment?

Hon. Mr. Ward: I will leave.

Mr. Wildman: I would like to know why he is doing this silly thing, that is all.

Mrs. Brick: We do not understand that completely either. Certainly we feel that the right should be there for an appeal. The fact that there were only two—people knew they had the right. We have heard from 54 member municipalities objecting to that right being removed. Certainly people have known to some extent that that option was available to them.

Quite often, if there is a right for appeal and there is discussion and dialogue, you do not have to go to the OMB. I think the fact that that right was there oftentimes meant, likely through discussion, that the OMB was avoided. It was the last route, if you will, that a municipality would take. That is why we would like to see that right kept in there.

Mr. Wildman: I will relinquish the floor in a moment, Mr. Chairman. You said you had 54 member municipalities that objected—

Mrs. Brick: Yes, that have written since they have become aware of the legislation that has been introduced.

Mr. Wildman: Do you have the impression—and this again is a speculative thing I suppose—that if this right were not removed, there would be far more use of it in the future by municipalities than there has been in the past?

Mr. Clark: I do not believe that there would be a lot of appeals,

personally, if there is dialogue, if there is consultation and also if there is the feeling of commitment that a fair system is going to be in practice. The minister mentioned updating the formulas and updating the rationale or the way in which it is presented. In terms of municipalities, if there is information and there is that commitment, then I do not believe there will be a big rash of appeals.

I know in our own municipality we lost an appeal under the old set of guidelines because we did not understand and did not know the formula at the time. Since then, we have received the formula through the ministry, through access information, and there are some questions answered. As the president mentioned earlier, if all municipalities and if our association received the information, certainly there would be fewer questions among the 54 municipalities that have talked to us.

Mr. Wildman: Just one other comment, Mr. Chairman: It seems to me that the very fact of a possible route of appeal may be a positive encouragement to municipalities to resolve their problems locally, in order to avoid that process if possible. For that reason I think, particularly in dealing with large district boards of education or separate school boards that take in a lot of municipalities—some of them may be a lot smaller than others within the same area—that this is an area of appeal that should remain.

Mr. Chairman: We have Norm Sterling, then Yvonne O'Neill.

Could I just say to people, I know it is sometimes difficult for one or two individuals to hear at the back and I would point out the devices there are not just for translation; these are infrared whatever they call them, and if you care to use those, you will hear perfectly well. I can see some people sometimes having difficulty, when one or two people are speaking.

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Mr. Sterling: First of all, I think, Minister, you wrongly characterized Mr. Clark's presentation in terms of the appeal that was being taken away. I think he was talking, if I am right, Mr. Clark, about you taking away the right of the citizen through his council, which represents his interest to appeal to an independent body about the fairness of the system under which he was being asked to pay his property taxes on the levy. It was not a matter of appealing his individual taxes that was of concern or was mentioned. At least that is the way I took it from Mayor Clark.

Minister, as to the data you now have from the Ministry of Revenue, I assume that you now have the data which were perhaps not available before which basically tell you what the values of homes are in each and every municipality across Ontario. Is that correct?

Hon. Mr. Ward: I really cannot answer that. These were not the data I was referring to. I was referring to the data that were used for the compilation of the equalization formula.

Mr. Sterling: You see, I spoke on this particular bill in second reading and I asked the minister a number of questions. I was trying to establish why he would remove the right of appeal under section 213. I understood from your answers—maybe you could clarify them for me—number one was that you had better data now in order to be able to make certain that with any formula, the proper figures would be plugged into that formula.

Hon. Mr. Ward: You would use current data.

Mr. Sterling: It would be current data. The second thing was that the reason you were resisting a right of appeal to the OMB was that there is an acknowledgement that the system is out of whack at this time because it was not changed before. Over the next five years you are trying to step to the situation where it is OK and at that time—

Hon. Mr. Ward: Phasing in the impact.

Mr. Sterling: Yes, you are phasing in the impact. At that time, I assume in 1993, in my view, there would be no reason for you to be concerned about a right of appeal to an independent body on the fairness of the formula. Is that correct?

Hon. Mr. Ward: I think I indicated during the course of the second reading debate the concern I had relative to the certainty that municipalities would be under relative to the apportionments and the fact that it was utilized in current data. We did in fact cap the impacts and, frankly, we did not want that section being utilized to short-circuit that.

The reality is that some jurisdictions benefit greatly from the use of new data and in other communities there is a negative impact. The possibility would exist that those who sought benefit could use the appeal to try to derive all of that benefit all at once and scupper our plans to phase it in and minimize the individual impact. That is the first point.

The second point, though, I would make is that I am not sure what basis would continue to exist for the OMB to hear such an appeal. The ministry through its regulation-making powers establishes the formulas. We share those formulas and those calculations with each and every jurisdiction. There now are not 200 or 300 different processes for making the calculation of assessments. There are not a whole bunch of different assessment bases. It is all being done on current updated data. Once you make this an empirical exercise, I do not see what basis there is for an appeal under section 213.

Mr. Sterling: That leads me to the conclusion then, Minister, that after 1993, there is no possible argument against the right of appeal of the OMB. If there is not a problem with fairness—

Mr. Wildman: If it ain't broke.

Mr. Sterling: If there is not a problem with fairness in 1993—I acknowledge there is a problem with fairness in the next five years and I am willing to accept that some of my taxpayers are going to be subsidizing some of my other taxpayers in my very own riding because I am well aware of the impact of the issue. But if in 1993 you cannot see how anybody could appeal on the fairness of the formula and how it was impacting, why not let them appeal in 1993?

Hon. Mr. Ward: Put it in there because there is no basis for an appeal?

Mr. Sterling: No. In section 213—

Hon. Mr. Ward: As it reads right now, section 213 says that a municipality may lodge an appeal on the basis of an undue burden. It has nothing to do with whether the calculations are appropriate or whatever. I do not frankly know how you define that. I suppose those arguments could have been made when there was a hodgepodge of data being utilized. Frankly, I do not know what objective, rational basis a municipality would have.

I go back to the whole issue that there are plenty of avenues for appeal on property taxes and there are all kinds of avenues for appeal on assessments that are levied against home owners. They continue to remain. That mechanism under section 213 may have been appropriate under the systems that existed in 1969 and before, but I am not convinced of the need to utilize that once we have updated it.

Mr. Sterling: I know you are not convinced. This does go to the heart of the bill, but the fact of the matter is that perhaps the Minister of Education 15 years ago was not convinced that there was a problem with the way apportionments were drawn up at that particular time.

Hon. Mr. Ward: I doubt that. I am sure the minister was.

Mr. Sterling: Whatever.

Mr. Chairman: Norm, you have the floor, but Mr. Hopcroft and Mr. Clark—would you mind if the delegation joined in? Could we start with Mr. Hopcroft and then we will move on? I saw him first.

Mr. Hopcroft: Very briefly, on the minister's last point, it is part of our constitutional history of having a system of checks and balances. On the one hand, you have a power in the minister or the ministry to set the apportionment. You may be very good about consulting and seeing that there is consensus as far as those figures are concerned, but a different minister may not be.

Without that check and balance in the system we feel municipalities would really be at the mercy of the province without any formula being there in the legislation or in the regulations, which are always subject to change, on which we could base any kind of rational challenge to what we perceive as being an unfair system.

Mr. Chairman: Norm, you still have the floor with Mayor Clark.

Mr. Clark: Just to follow up on what my colleague Grant said and refer back to what I said a few minutes ago, it goes back to commitment. There is a commitment, and I do not think I heard anybody on our side of the table talk about the phase-in, as the minister mentioned. We have talked about the commitment. If you take away the right to appeal, there is no guarantee on our part that the commitment will remain for the next four years.

I think we would like to have an opportunity for the municipalities to still have that right, as they did under section 213. We need an opportunity, so that if a municipality can prove that it has been treated unfairly, it can go to an independent body for a hearing and have its day.

Mr. Sterling: I would just like to ask, if it would be OK with the delegation, Mayor Franklin basically has forced Bill 100 upon us in terms of rectifying a system that went out of whack. I think perhaps—

Mrs. Brick: We were going to do that as part of our wrapup, but perhaps now, if we could have the chairman's indulgence—

Mr. Chairman: For the benefit of the committee and the delegation, I would be delighted. Mayor Franklin, please join the group here. I would be grateful. I have Yvonne O'Neill and Bud Wildman still on the list, but I do think in deference to the next delegation—we know we started late—we should keep it fairly tight.

1620

Mr. Franklin: I am Ben Franklin, mayor of the city of Nepean.

Mr. Chairman: That is easy to remember.

Mr. Franklin: That is what I keep hoping.

If I may address the right to appeal, we believe this is very important. This is why we are here. If we did not think it was important, we would not be here. We have had a long history of attempting to change a system that we felt was unfair.

I know, from the ministry's point of view, of the problems with the Ontario Municipal Board decision and maybe some of the things that indeed are not being said. I know that the OMB went through a period where it really did not want to make a decision, but that right was still there and we kept plugging away at it. Without that right, there would not be a bill and we would not be here.

I congratulate the province of Ontario for taking the initial step in changing the system, but if the commitment for the phase-in does not follow through, then our right to appeal that system on behalf of our residents is gone. As you are aware, there were some attempts at the beginning of 1980 to alter the system, which was supposed to make it fair. There was supposed to have been a phase-in and it did not work out. The reality did not work out the way the theory was supposed to.

The municipality has a fair amount of expertise. People look to their local government to act in their best interest when it comes to property tax. We collect it for them and they expect us to act on their behalf in those matters.

The individual's right of appeal under this proposal is gone. Sure, he can complain to his MPP or he can appeal his assessment, but that does not alter the basic fact that if on one side of the street in one municipality the taxes are dramatically different from those on the other side of the street in another municipality, there is no appeal mechanism any more to have that injustice fixed.

We believe that it is a basic right, notwithstanding the ministry's problems with the OMB. I appreciate them—we all do—but there has to be a right of appeal. Without that right of appeal, I think the government is going to have more problems trying to explain it if there are injustices or indeed if the system does not get implemented as proposed. I think it is going to cause a lot more grief when you have taken away local government's right to appeal, so I would ask the government not to include that provision.

I think there have been some good points made here. If the right is there, not everyone is going to use it. To answer the other question, we discovered last summer that many municipalities were not only totally unaware of the right to appeal but were also totally unaware that indeed there was a lot of discrepancy in the taxation and the apportionment within the municipalities of common boards.

Mr. Wildman: When they find out, it will be quite a shock.

Mrs. O'Neill: The term that is appealable, "undue burden," has not

even been mentioned here. I think that is at the crux of the whole matter. Even in the one case—and our mayor is here, Mr. Franklin, who brought that case—there were three different definitions of what "undue burden" was in that one case.

One was equal taxes for property of equal value. If you did not have that, you had undue burden. The other was that if the formula was not based on recent composite equalization factors, there was undue burden. Whether you were dealing with market values of 1975, 1980, 1979 or any given year, if you were not dealing with those, you had undue burden.

This is an impossible judgement for people to make because even the plaintiffs in any of these appeals come together with different concepts of what "undue burden" is. This is what the regulations are going to attempt to eliminate. At least, every municipality in this province will be starting from the same equalization factors with what we hope are the fairest interpretations of what "undue burden" would be, if it resulted.

We feel that once the municipalities get all of the data, and once the school boards themselves also have access to the data and understand them, the level of discussion and the level of understanding will be certainly much greater than it has been in this first runthrough.

I do feel very strongly that the phase-in procedures we have and the capping of those are about the fairest way in which we can deal with this. It is a very complex problem that all of us want to somehow improve. Hopefully, we will be able to do that.

Mr. Stérling: I just want to indicate that, once this group goes, I intend to introduce an amendment to the bill which basically would maintain section 213 as it now stands but would deny the use of it until 1993 on the basis that there is going to be a phase-in period over that time; basically, it would kick section 213 back in. I will give you a copy of that amendment before you go, if you have any constructive suggestions.

I could not agree more with everything the minister has said about the new system and all the rest of it, but I do not care what the definition of "undue burden" is. I would rather have the right of appeal there, without defining "undue burden," and worry about that over the next five years. If the minister wants to better define that over the next five years, we can change section 213 of the Education Act by amending the definition of "undue burden." We do not have to worry about it for five years because there will not be any appeals for five years.

I think municipalities should know, when their treasurers get together and when they are calculating things out and talking about it, that there is this ultimate appeal where somebody can go to the Ontario Municipal Board and in fact appeal.

Quite frankly, I do not find coming up with a definition of "undue burden" to be a great problem. I think Ben Franklin gave the definition right there. If there are two houses of the same value across from each other in the same board, they should be paying approximately the same amount of education taxes.

Mrs. Brick: Mr. Franklin's presentation was based on that definition. I am glad you remembered that. That is one definition.

Mr. Sterling: I do not think I would have a difficult time coming to

a compromise on what that should be, but I think the most important part of it all is that if the provincial system of government gets out of whack in terms of what the property taxpayer has to pay, then these guys can force a change. That is what has happened. That is what Mayor Franklin has done in the past. I would hope that somebody in the future would do that, if the system does get out of whack and people are not treated fairly. That is why I want the right of appeal back in 1993.

Mr. Wildman: I, too, think we should retain the right to appeal. I congratulate the ministry and the minister on the efforts they have made, but I think the right to appeal should still be there for the reasons I mentioned before.

As a representative of a very rural area in the north, I want to point out that when you are dealing with very small municipalities, sometimes appended to a board with one or two big municipalities, you can define "undue burden" in other ways. I think it should be open to a body like the OMB to define it.

When the municipalities have 75 per cent of their taxes going to education, and there is, suddenly, a reapportionment which significantly increases it, frankly, I think that is an undue burden. I think municipalities, if they think their apportionment is not fair, should have the right to appeal. If the appeal fails, it fails, but they should have the right to appeal so that if there is some error or misapportionment, then, in an arbitration process among the various clerks or the administrators of the municipalities, they can try to work something out so that we do not have a situation where a municipality is faced with such an enormous adjustment over a short period of time that it cannot do the other things municipalities are responsible for doing, in terms of maintaining roads, sanitary landfill, fire protection and so on.

I know that may seem foreign to someone who represents an urban area, but it is a situation that exists in rural Ontario; and I have not even gotten into the problems of the unorganized townships, which are faced with no rights of any sort in this whole situation.

1630

Mr. Chairman: Mrs. Brick, would you care to wind up?

Mrs. Brick: Mr. Chairman, I know we have run over our time but I hope we have made the point that we do need to retain a right of appeal. In any system, no matter how perfect, if it is that perfect, it will not harm the legislation to have the right of appeal there. We look forward to the amendments that may come in Bill 100.

Mr. Chairman: I want to thank Mrs. Brick and all of the other representatives of AMO. I think your case has been very well put.

ASSOCIATION OF LARGE SCHOOL BOARDS IN ONTARIO

Mr. Chairman: The next delegation is the Association of Large School Boards in Ontario. I would be grateful if you would come forward, please. Again, I ask if each of you would clearly state your name and affiliation, for the benefit of the people here, and then if you would continue.

Ms. Nelson: My name is Fiona Nelson. I am the president of the

Association of Large School Boards in Ontario. With me is Marilyn Cameron, who is a member of our legislation and finance committee and a trustee from Nepean.

We have a very simple presentation to make to you. In fact, Trustee Cameron is going to read into the record a letter from the chairman of the Nepean board, Professor Hansen, and I simply want to make one point, so we will not be taking very much of your time. I will pass over at the moment to Ms. Cameron.

Ms. Cameron: The letter I am about to read portions of is dated May 6 and is to the Honourable Chris Ward from the chairman of our board, Dr. Hansen. It was just after Bill 100 had received its first reading.

"We request that Bill 100 be revised to allow an independent agency to hear an appeal against an inequitable and unfair apportionment of school board levies.

"No doubt you are aware that the Carleton Board of Education has been involved with school board appeals by municipal councils since the mid-1970s. These appeals have often led to the Ontario Municipal Board eventually hearing the appeal and making a decision.

"The municipalities in our jurisdiction have been striving for greater equity in municipal apportionment since the 1970s and appendix A to this letter shows the continued disparity among the municipalities. Even after the ministry had introduced new regulations for 1988 to achieve greater equity, the difference in 1988 residential school taxes from the lowest-taxing municipality (West Carleton at \$670) to the highest (Nepean at \$1,115) is \$445." This, as I reiterate, is after the new regulations. "As you know, our educational service is uniform throughout the jurisdiction so that the cost to the taxpayers should be uniform as well."

I will go on to another part of the letter. As we all know, the appeals did result "in the municipalities of Carleton receiving \$4.5 million in additional grant support....

"However, as a result of the OMB decision, the ministry has introduced in 1988 a revised apportionment basis which is stated to be more equitable. If it were not for the OMB involvement and its decision, the matter of equity would" certainly not have been "addressed. For this reason, an independent and objective agency should be involved to provide the checks and balances every system should have.

"Bill 100, however, takes away the legal right of municipalities to question the inequity of their school levy. At a time when the government should be guaranteeing stability and equity, municipalities can only question the accuracy of the mathematics. Even at this late date in the school board's process of distributing its school levy...the details and worksheets to determine the full impact of the new 1988 apportionment regulations have not been provided to school boards.

"As a result of our experiences, the Carleton Board of Education at its meeting held on 25 April, 1988, adopted the following resolution:

"That the Carleton Board of Education request that Bill 100 be revised to allow an independent agency to hear an appeal against an inequitable and unfair apportionment of school board levies."

Ms. Nelson: We have a very brief brief to give you. It is just a

page and a half. I really would like just to highlight two paragraphs. One, we are aware that this bill has two key components, the first one of which facilitates the updating of equalized assessment values or factors. The second one, however, drastically reduces the scope of independent review of the fairness of the administrative decisions, and it is that one that we want to address. It may sound as though we are singing the same chorus as the previous deputation, but I think it is important to make a distinction here.

What we are concerned about is that municipalities do not have this right, and in fact instead of expanding the right of appeal, it has been totally taken away. We would have preferred that it be expanded to allow separate school boards as well as public boards and municipalities to appeal the basis of the assessment. The fact that an individual, a citizen, still has the right of appeal does not deal with the substance of the problem but simply with the total tax bill.

It seems to us that the minister has foreseen 70 or so appeals on the horizon and has attempted to pre-empt them with this bill. But the consultation on this bill was really lacking totally and this has produced a bill which has not addressed the problem, in our opinion. It has simply forbidden people to sort of discuss the basis of the problem. I think this is something that we really feel is a fundamental right that must be not only restored but also enlarged.

I think it is very dangerous for us to have such a raft of reforms as are coming in but not the appeals that go with it, because there are bound to be wrinkles and snags in spite of the best efforts of the best minds. It seems to us that all groups should be included in that right of appeal and it should be a right to appeal the fundamentals on which the tax bills are based and, if you like, on the basis of a class action of a municipality, not just of an individual who does not want to pay the total amount.

It is for that reason that we are appealing to you to amend the bill and to make sure that in fact all boards and municipalities have the right to appeal the basis of the calculations and not just the total that falls out of the calculations. We do not want to get into the complexities. I think you dealt with that a great deal with your previous deputation. We just want to make sure you know that, like the Association of Municipalities of Ontario, we are very much in favour of the expanded right of appeal by municipalities and public boards, as well as separate boards. As I am sure you are aware, at the moment, separate boards are excluded from this situation, and we do not think that is appropriate either. Even though they are not members of our association, we do think there should be a very broad basis for appeal.

Hon. Mr. Ward: I have a couple of comments and a few questions. First, coming back to this notion of the basis on which municipalities have to appeal apportionments, particularly relative to county and regional apportionments or upper-tier apportionments, whatever you want to refer to it as, I think it is important to note that the only basis for an appeal that exists under the Municipal Act is solely on the utilization of the numbers themselves. There is no undue burden or hardship provision. It is strictly a number exercise.

The utilization of updated equalization factors, as I have indicated before, becomes an objective exercise generated by the ministry. Surely to goodness, anyone who has a question or wants a justification of those numbers would seek that from the ministry's school business and finance branch as it generates that. But bear in mind that the municipal right, as it currently exists, is only on numbers.

I take exception to one thing; that is, there has been little input or debate on this. My impression is that this debate has been going on for 18 or 19 years. There has not been a month go by when a board or a municipality or a community does not object to the rationale that was used in making the mathematical determinations. I guess it all comes down to the issue of fairness. It was not the 70 appeals that generated our move on the equalization factors. You will bear in mind we announced that at the same time as we brought in Bill 100.

1640

I think it is fair to say, though, that the success of seeing appeals go through the OMB, using undue burden and hardship as opposed to any objective criteria, really does generate almost a roulette kind of opportunity that can become highly charged. I saw that very clearly during my time in northwestern Ontario, where it literally was community against community over this. I just want to reiterate that the municipal right of appeal for upper-tier purposes is solely on numbers. That is exactly what we now have for school board apportionments as well.

Mr. Chairman: Can I go to Norm Sterling? Ms. Nelson, would you like to speak?

Ms. Nelson: I do not think it is useful for us to go back and forth on this. One could mention that perhaps some of the reason for all this back and forth on the factors has to do also with the unrealistically low grant ceilings and various other things, but that is not germane to this bill.

Hon. Mr. Ward: You will make that point anyway.

Ms. Nelson: Yes. We all learn how to debate one way or another.

Hon. Mr. Ward: We will not talk about expenditures over—

Ms. Nelson: No, certainly not.

The point our association wanted to make simply was that as we have said on previous occasions recently, and I think to this very committee, our wish is to see the rights of appeal expanded rather than restricted. We are simply here to sing that same song again. I think Ms. Cameron has a point she would like to make as well, if that is all right.

Ms. Cameron: Just a comment about the discussions having been going on for 18 months: If the discussions revolving around removing the right of appeal have been going on for 18 months, then certainly we did not know about that.

Mr. Sterling: I want to thank the association for being involved in the debate, because it is really a municipal bill even though it is under the Minister of Education. Notwithstanding whatever happens here, the school boards really can wash their hands of the whole matter. All they have to do is send out their levies and they can say: "That is fine. The Ben Franklins, the Anton Wytenburgs and the other mayors have to take care of the problem." I think the Carleton Board of Education is to be commended in particular in terms of the leadership role it has played under Dr. Hansen.

What I still get back to is that if there is no problem and if in fact everything is going to be equitable and wonderful in 1993, then why worry

about taking away the right of appeal now, in 1988? If there is nothing to worry about and everything is going to be fair and there is going to be more equity in terms of how this thing is decided, why take it out at this particular stage?

There is another thing I would differentiate in your remarks, with regard to regional and county assessments. They in no way reflect the same monetary impact on the property taxpayer. Usually, the education portion of the bill is substantially higher than a region or county levy and, therefore, notwithstanding all the other arguments about equity, if equity is not found in terms of a regional levy, then it only affects 20 per cent of your tax bill; if equity is not found in terms of an education levy or whatever, it may affect 50 to 60 per cent of your tax bill. In hard-core dollars that the property taxpayer—

Interjection: Seventy-five altogether.

Mr. Sterling: Well, 75 in this area.

Hon. Mr. Ward: Just to conclude, obviously, the appeal on the calculation and the utilization of the formulas is from the municipalities or the boards to the ministry in making those calculations, not to the Ontario Municipal Board on the basis of policy or whatever, because frankly they do not have a role to play in that regard. That is the first point I want to make.

Mr. Sterling: Yes, but, you see, I do not—

Hon. Mr. Ward: The second point, Norm, quite frankly, is that you and I know that for 19 years the reason the equalization factors were never updated is that in every instance the response was, "If you don't like your apportionments, you can always appeal," and we just went along for 19 years hiding behind that. Frankly, the appeal, the concern, the comeback should be to the ministry and it is.

Mr. Sterling: The problem, though, is that what you are talking about are significant tax dollars my constituents have to pay each year.

Hon. Mr. Ward: Well, for 16 years the people of Nepean subsidized the people of Gloucester and the people of Cumberland subsidized the people of Osgoode, because of not having the outdated factors.

Mr. Sterling: That is right.

Hon. Mr. Ward: The settlement is not what generates this because we had no obligation to participate in it. The concern is that there have been years and years of inequity and unfairness. We have the ability to put it on a solid, updated basis, and we will. The comeback is to the ministry in making those calculations.

Mr. Sterling: That is fine and dandy for you to say, Minister. I was in your role three or four years ago as a minister as well. But I do not, as a member of the Legislature, get an opportunity to defend my constituents, because you can make that behind closed doors or your bureaucrats can make it without question. Quite frankly, if my experience was the same as it is in terms of your cabinet, with most of these things nobody in the damned cabinet will understand what the hell the fighting was all about anyway. Everybody will stamp it and—

Hon. Mr. Ward: Fortunately, we have freedom of information, so they can ask us now, Norm.

Mr. Sterling: I know they can ask you but they have to pay right through the nose for the information.

Hon. Mr. Ward: For some things, for some services. You supported that bill.

Mr. Sterling: Yes. With anything that is dangerous, you have to pay. At any rate—

Hon. Mr. Ward: I offered you a freebie and you did not take it.

Mr. Sterling: We will see if I get the information from you in the end, because you are going to have to pay in spades for it one way or the other.

I think the amendment I have put forward, and I assume you have seen a copy of it by now, is not unreasonable in terms of what I am asking for. I think it would do a lot to speed this bill on its way through the Legislature prior to the summer period and assist us in getting out some time in July.

Mr. Wildman: I do not have nearly what might be considered the conflict of interest Norm might have, as he is a resident of Rideau township. But as a former resident of Osgoode township, I would like to know something about the apportionments here and the estimated taxes. Are these figures based on houses or properties of equivalent value?

Ms. Cameron: I do not know—

Mr. Wildman: OK. The situation prior to the appeal by Nepean, or still the situation, was that someone—I will use my former home area—of Osgoode is paying \$819 as opposed to someone in Nepean who is paying \$1,115, and West Carleton is only \$670. It had been like that for some time.

My question to the delegation is, and you may or may not want to comment on this: Do you think, if the appeal had not proceeded to the OMB, we would be in a situation where we would be attempting to rectify this by whatever means, or would we just continue?

Ms. Cameron: I do not know if I can address that but I do not see, if it had not been appealed and pushed, what would have brought about change.

Mr. Wildman: OK. If that is the case, then it seems to me that it is beneficial to all concerned that we retain the right to appeal even though the ministry, as I said earlier, is attempting now, over a phased-in period, to rectify the situation.

1650

Ms. Cameron: If I were to go back to the taxpayers in the city of Nepean, along with my colleagues who are trustees in the city of Nepean, and explain to our taxpayers that we have had some success or the city of Nepean has had some success in the rebate, but we have not achieved equity as yet, I think that the taxpayers would become very distrustful if they discovered that we had made a little bit of headway, but now the Ontario government was going to make sure that we would never have a chance to try anything like that again.

We have five more years perhaps before equity is actually achieved. I am concerned that there could be some distrust built in and a feeling of betrayal.

that part-way along the way to success, the avenue to appeal has been withdrawn.

Mr. Tatham: I am trying to get this through my head a little bit. What took place, Minister, prior to the OMB decision? Why was that not rectified by the ministry?

Hon. Mr. Ward: That becomes very, very speculative. My sense is it is not any different from what was taking place at the municipal level throughout Ontario from 1969 on. Back in 1969 the responsibility for assessment was removed from municipalities and assumed by the provincial Ministry of Revenue. I believe the intent at the time was to bring in province-wide property tax reform and move everything on to an equitable basis, utilizing market value assessment.

By and large, the reform did not move quite as quickly as some people expected. As a matter of fact, it then became an optional program where certain municipalities would undertake a market value reassessment by way of council resolution. As a result, over a period of years several hundred municipalities did engage in assessment reform and others did not.

For education purposes, what has happened is that the data for making the calculations for apportionment within a board's jurisdiction utilize a wide array of data, some that were generated by local municipal assessors in 1969 or before, some using current figures. The generation of factors is at best—Brian, is it fair to say it is totally objective?

Mr. Lenglet: It is not supportable.

Hon. Mr. Ward: His words are "not supportable." In other words, at best it is guesswork at making a determination. What we are saying is that we have assessment data within the Ministry of Revenue that is defensible, that is consistent.

Mr. Sterling: The short answer is that the data are better now. Is that not right?

Hon. Mr. Ward: You want to know why it did not happen, Norm? I was trying to save you the embarrassment of saying the government refused to act. OK?

Mr. Tatham: What I am trying to say is this: All right, the minister is saying that now the system is better, but it is going to take five years to really balance it out. Is that it?

Hon. Mr. Ward: We want to phase it in because there are impacts. There will be transfers. What happens is that some property taxpayers in some communities are subsidizing neighbouring communities. That is what has happened in the Nepean area.

If you went and got out your settlement, for years there has been a subsidization by some property owners at the expense of others. It would not have happened if we had moved sooner, if this had been done from the outset.

Mr. Tatham: It is going to take five years. There is no sense in trying to appeal it because this thing is going through a five-year cycle. Is that the idea?

Hon. Mr. Ward: The concern is that somebody could insist on having

an immediate updating, knowing full well that we are going to publish factors that use current supportable information. They could say, "Why should we have to wait for a five-year phase-in? We want it now."

That might be fine for those who are going to save five or six per cent on their taxes. It might be a little bit tough to take if the smaller community has to have a 30 or 40 per cent increase to generate the revenue for another community's five or six per cent increase. That is what we want to avoid, those large 20 and 30 per cent impacts which happen regularly when municipalities move to market value assessment.

Mr. Tatham: Mr. Chairman, through you to Ms. Nelson, does that seem reasonable to you folks then?

Ms. Nelson: That sounds like a leading question, Mr. Chairman.

I realize that a great many of the senior business officials from the ministry are in the room and are hearing this discussion, and I am sure they are all very competent and well-intentioned people. I am just worried that without an impartial third party to whom people can appeal when a particular appeal does not produce the desired result, a great many people are going to be left with the feeling that they have not had an opportunity to be fairly dealt with.

I think that no matter how well the thing is set in place with a five-year cycle and the whole thing rolling along merrily, there are going to be situations where appeals to the officials are not going to give people the satisfaction they want. There should be an opportunity for an outside one, no matter what the intentions are, and we do laud the first intention, which is to bring some equity into this whole process. We still feel there are going to be situations where an appeal is appropriate and should be permitted.

I do not think there is going to be a helter-skelter run at the OMB. I think a great many people will realize that with the five-year phasing in of the thing, we are working towards equity; but I think in spite of that, there are going to be particular things show up that should be dealt with by an impartial third party.

So I cannot go along with the minister's very plausible recommendation, in spite of his faith in his officials and I have no reason to dispute that.

Mr. Tatham: I am confused. Are we talking assessment or are we talking the Ministry of Education? What are we dealing with here?

Hon. Mr. Ward: The factors that are used to determine the apportionment of education taxes, the old property tax.

Mr. Tatham: Is that what you would appeal, the factors?

Mr. Sterling: Charlie, do you have the letter from—

Mr. Tatham: Yes.

Mr. Sterling: Look at the back page.

Mr. Tatham: I know. I understand but I am just trying to find out who has got the—

Mr. Chairman: The minister will try to explain.

Hon. Mr. Ward: Apparently, the Education Act, because of the hodgepodge that exists out there, says that a municipality can lodge an appeal citing undue hardship or burden. For county purposes, municipalities have that same right of appeal but it is strictly a mathematical exercise.

The regulations kick in, and it just becomes a matter of crunching the numbers and factors that are calculated by the Ministry of Revenue. This too, for educational purposes, using updated data, becomes strictly an exercise in mathematical calculations. Once we share with everyone how the formula is calculate, if there is an objection or an error in the determination of the numbers, the comeback is to notify the ministry of the error.

Mr. Tatham: In other words, this is assessment then. Is that it?

Hon. Mr. Ward: Yes.

Mr. Tatham: It is not education; it is assessment.

Hon. Mr. Ward: A calculation of the factors—

Mr. Tatham: Right.

Hon. Mr. Ward: For education taxes.

Mr. Tatham: But it is based upon the assessment.

Hon. Mr. Ward: Right.

Mr. Wildman: And the factors.

Hon. Mr. Ward: And the formula.

Mr. Tatham: OK, the assessment made up by the assessment people and the factors made up by the education people. Is that it? Is that right?

Hon. Mr. Ward: Yes.

Mr. Tatham: So then what are you arguing about?

Interjections.

Mr. Tatham: I appreciate that, but I am trying to find out who is in charge, the assessment people or the factor people?

Mr. Wildman: Have you ever heard Abbott and Costello's Who's on First?

Mr. Tatham: I am just trying to figure this out.

Hon. Mr. Ward: The Ministry of Revenue generates the assessment data, the Ministry of Education puts in place the formula to use for the calculation of the factors.

Mr. Tatham: But is the basic problem not the assessment?

Hon. Mr. Ward: No.

Ms. Nelson: It is the equalization factors that are the problem.

Hon. Mr. Ward: It is a combination of the two, but our involvement is primarily the equalization factors. We make the mathematical calculation—

Mr. Tatham: To get the dollars. Right.

Hon. Mr. Ward: —to figure out whether or not Nepean pays more than Cumberland or whatever, within Carleton, as an example.

1700

Mrs. O'Neill: I think the minister has stated that we had the appeal process there. It was there for 18 years. Two appeals went forward. The city of Nepean's was one of them. One of the great difficulties with the appeal process if you take the Carleton Board of Education, which was the board under the microscope in this whole set of appeals, was the fact that if you look down the left-hand side of the sheet you were given, you have eight municipalities there. Although he represents the city of Nepean, each trustee who is elected to that board from Nepean is a member of the Carleton Board of Education once he becomes a member of that board. The same happens, at a different level of course, with regional governments in these various areas.

It is very difficult politically—the city of Nepean did it, and did it very successfully—to get these people involved in appeals against each other on something which they all share in the end, because each of these municipalities represented on the Carleton Board of Education shares in the revenue that is collected.

It is a very complex matter, it is very politically difficult and this is why no action was taken. That is what the minister is trying to explain, that the appeal process being there did not make this any easier. Nepean got on a roll. They did something and they have been successful, but the appeal process being there will not necessarily remove inequities.

Mr. Sterling: As I understand it, and I am just looking at Mayor Franklin, notwithstanding that the appeal was brought in 1984, there was a grievance prior to that time and that municipality did not take lightly the action of eventually going to the OMB in terms of what it was doing.

Mrs. O'Neill: Your party was in power then; that is for sure.

Mr. Wildman: But no municipality would take lightly an appeal to the OMB.

Mrs. O'Neill: That is right, exactly, but I am just saying Mr. Sterling said there was a grievance and it was not acted on.

Mr. Sterling: But eventually they did. When you really get down to the bottom line, the reason they took the final action was they looked at the value of a home in Nepean at, let us say, \$100,000—

Mrs. O'Neill: I live there and I know exactly what you are saying.

Mr. Sterling: —and they took the value of a home in West Carleton at \$100,000, and there was a difference of somewhere between, I believe, \$700 and \$800? It was \$500 in taxes, notwithstanding that they were the same value of homes. That is the crux of the whole thing. Through all the formulas, through the best of intentions developed and the best data we have at the

time, regardless of that, the municipality which is representing the taxpayers paying \$500 more wants the right to go to an independent body and complain about it. That is what happened with Nepean, and the OMB said there was an undue burden on the Nepean taxpayer and there should be some redress. That is why we have Bill 100.

The answer that the ministry is coming back with is, "We've fixed this up because we have better data, we have a better formula and we recognize that over five years there are injustices." But there have to be steps in this so that while the taxpayer may be subsidizing now—the one in West Carleton, if you look at it, is still paying only \$670 as opposed to a Nepean taxpayer who is paying over \$1,100—supposedly in five years everybody will be paying the same school taxes on the same value of home. That is, I believe, is the ultimate goal.

But if it does not happen, if the formula gets mixed up or the data get bad and it gets out of whack again, municipalities across Ontario want the right to go to the OMB and say it is out of whack again. That is why I think it is a matter of keeping the provincial government in check.

Mr. Wildman: Mr. Chairman, if you would permit it, I have a question for the minister's staff. I do not want to burden the committee with the details of a particular case that we are familiar with, but I do need an answer to a question which might affect the way I will vote on this matter.

In a particular case in central Algoma, which I have alluded to earlier, there was a situation where data that were needed were not available. As a result, there was an inappropriate apportionment to the various municipalities in that board. An adjustment was made the next year, which was substantial and, in the case of small municipalities, a burden to those to those small municipalities and affected their ability to budget for other municipal services.

In that case there was not an appeal to the OMB because after the arbitration process failed, then the two or three municipalities that were aggrieved were not sure they could win at the OMB. If there had not been a right of appeal in that situation, if there had not been a route to the OMB, and if the appeal had gone to the ministry, in that case am I not correct in understanding that the ministry would not have been able to help the aggrieved parties?

Mr. Lenglet: I think in that case we have a somewhat different situation, that the mistake that was made was one of using the incorrect assessment data. So the ministry created an apportionment in 1986 which created underlevies and overlevies that had to be corrected in 1987. The question then is what appeal process would be available to the municipality in 1987.

I am not convinced they had a case of undue burden; that is an open question. Part of the problem with this whole exercise is that we never know; no one knows what "undue burden" means. Failing the existence of an undue burden provision, I would assume the ministry would make much more clear that the question of that issue, all issues related to apportionment, would be much more directly attributable to the ministry.

It would be much more a question of: "Ministry, here is the situation we find ourselves in. You have now taken full and complete responsibility for that data. Here is what has happened, based on our reliance." All I can say is

that it would seem to me that there would be a much more direct line of responsibility for the events that occurred.

Mr. Wildman: I am not going to go into the details of the case, but it does seem to me, even from what you have just said, that they had no greater chance of getting assistance in dealing with the burden if they had been able to go directly to the ministry, rather than having the OMB route, from what you have just said.

Mr. Lenglet: Hypothetically, I think that is correct.

Mr. Campbell: I was going to suggest, if we have finished with the delegation, that we should excuse them and deal with the clause-by-clause review.

Mr. Chairman: Miss Cameron, Ms. Nelson, thank you very much indeed.

Ms. Nelson: We look forward to the bill.

Mr. Chairman: Ladies and gentlemen, we now proceed to clause-by-clause review of the bill. I have notice of two amendments. Are there any other amendments of which I might hear? No?

What I propose to do then, if it is reasonable, is to call the sections, except where there is a subsection to be dealt with. Then I will call the part of the section concerned before that subsection. The first notice of amendment that I have is section 1, page 1 of the bill.

Section 1:

Mr. Chairman: Mr. Sterling moves that section 1 of the bill be struck out and the following substituted therefor:

"1. Section 213 of the Education Act, being chapter 129 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

"(14) This section does not apply on and after the first day of July 1988, up to and including the 30th day of June 1993."

Mr. Sterling: Just briefly, I think I have explained the amendment during the hearings. Basically, what this does is it allows the ministry to phase in its plan for making the system of allocation to various municipalities and a common board over a five-year period. In other words, over that five-year period, there would not be an opportunity for a municipality to appeal beyond the local divisional board on the basis of calculation alone. For five years, that would be it, and under regulation, the ministry could make a formula and supply data, etc., whereby there would be no appeal.

1710

I am doing that on the strength of the minister's saying there is going to be a phasing-in period over the five years and on the trust that is going to be carried out. Some municipalities, such as the municipalities of Nepean and Goulbourn, are relying on the fact that they are going to get equity in their situation, and I am sure that there are many municipalities across the province that are in the same position.

After five years, if in spite of all the good intentions of the minister and the ministry officials, the regulations and the data are such that a municipality feels aggrieved that there is an undue burden upon it with regard to the levy that it is being asked to pay for by a common board, then after the divisional board has its hearing, there will be a further appeal to the Ontario Municipal Board, which is now in place under section 213 of the Education Act.

Therefore, in essence what the amendment would do is put section 213 on hold for a period of five years while the ministry put a better formula in place and made the system more equitable.

Mr. Wildman: Before I comment, I would like to know if the minister has a response. I hope that he is going to accept the amendment.

Hon. Mr. Ward: No, we will not be accepting the amendment, for reasons previously stated and also the fact that, given the capping provisions of the impacts, not all municipalities will be totally phased in in five years.

Mr. Wildman: Having heard that, I regret the minister's response, because I think the arguments have been put by members of the committee during the period when we had delegations before us. I do think that what this does is give the ministry the option of the best of both worlds. It avoids the situation where there might be appeals to the OMB demanding immediate change all at once, but still gives the municipalities, after 1993, the option of appeal. I think that this is a compromise, and the fact that you have a New Democrat supporting a Conservative motion is an indication of what a great compromise it is.

Mr. Sterling: I am sorry that the minister will not accept it. I am quite willing to change these dates and accept an amendment to my amendment to alter the dates so that we can get all the boards within that time. If it is going to take six years, we will move it to 1994; if it is going to take seven years, we will go to 1995. Quite frankly, I feel that it is reasonable. I do not think your arguments really justify the rejection in terms of your feeling that things are going to be equitable and everything will be OK five or six years from now.

If that is the case, I think I should put you on notice that I will force it back into committee of the whole House, where we will have to allow members such as the member for Nepean (Mr. Daigeler) to vote against this kind of amendment and slow the process down. Believe me, if ministers of the crown are not going to deal constructively with members of the committee, they leave us no other alternative than to use the only tool we have to make them listen.

Mr. Chairman: Any further discussion? All those in favour of Mr. Sterling's amendment?

All those opposed?

Motion negatived.

Section 1 agreed to.

Section 2:

Mr. Chairman: I will now call subsections 2(1) and (2). I do that because I have notice of an amendment to subsection 2(3). Is there any discussion?

Mr. Sterling: My second amendment makes no sense.

Mr. Wildman: It is now redundant.

Mr. Sterling: I will not be placing that.

Mr. Chairman: All in favour? All opposed? Carried.

Section 2 agreed to.

Sections 3 to 6, inclusive, agreed to

Bill ordered to be reported.

Mr. Chairman: This bill, it is my understanding, as the clerk says, will be reported tomorrow. Is there any other business before the committee? If I can repeat my understanding of our agenda, we do not meet on Thursday. We meet again on Monday to continue clause-by-clause consideration of Bill 109. The committee is now adjourned until after routine proceedings on Monday in this same room.

The committee adjourned at 5:19 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT

MONDAY, JUNE 20, 1988

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitution:

Reville, David (Riverdale NDP) for Mr. Allen

Clerk: Carrozza, Franco

Staff:

Baldwin, Elizabeth, Legislative Counsel

Wood, Michael, Legislative Counsel

Witnesses:

From the Ministry of Education:

Ward, Hon. Christopher C., Minister of Education (Wentworth North L)

Tomlinson, J. R., Senior Legal Counsel, Legislation Branch

Lamontagne, Maurice, Education Officer, Franco-Ontarian Education

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, June 20, 1988

The committee met at 3:44 p.m. in room 151.

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON
(suite)

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
(continued)

Etude du projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

Consideration of Bill 109, An Act to establish the French-language School Board for the Regional Municipality of Ottawa-Carleton.

M. le Président: Mesdames et messieurs, bienvenue à une réunion du Comité permanent des affaires sociales concernant le projet de loi 109, Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton. Nous avons avec nous le ministre de l'Education, l'honorable Chris Ward.

Le Comité a tenu des audiences publiques à Ottawa et à Toronto. Aujourd'hui, nous commencerons l'étude du projet de loi 109, article par article.

Ladies and gentlemen, this is the standing committee on social development. Today, we are considering, clause by clause, Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton. We have with us as a guest the Minister of Education (Mr. Ward). We have held public hearings in Ottawa and here in Toronto. Today, as I mentioned, we begin clause-by-clause study of this particular bill.

Before we begin, members of the committee, I have some organizational matters. First, our budget was approved by the Board of Internal Economy, you will be glad to hear. I understand we have been assigned the first two weeks in August as the official weeks in which the committee will be sitting. It is not yet clear to me what exactly we will be doing during those two weeks. I urge members of all parties to approach their House leaders to see if we can refine that a little.

We have received, and I think all members have them, the written submissions of the Sudbury District Roman Catholic Separate School Board. We heard their oral presentation last week. They were sent to us by Roland Montpellier, the chairman of that board.

I think members have received some further information from Bob Gardner, our research officer. We have been very concerned about some legal aspects of this bill. I was asked to inquire whether Mr. Foucher had updated his 1985 paper on the constitutionality of various aspects of what we are dealing with. We have spoken, I believe by phone, to Mr. Foucher and he says there have been no changes since his 1985 submission.

With regard to the committee again, you know we asked specifically if we

could consider the estimates regarding senior citizens' affairs and the ministry was certainly very agreeable to that. Some of us—I, at least—have actually received the estimates material. I am not sure, and I mention this for your information, if and when we will be doing those estimates, but it is possible we will be doing those estimates next week, perhaps Monday and Tuesday, but I—

Mr. Jackson: On which ministry?

Mr. Chairman: The Office Responsible for Senior Citizens Affairs. By the way, the committee asked specifically for that because we were interested in Dalton McGuinty's suggestion of developing the discussion on senior citizens' affairs in the province. I will undertake to follow that up, if not tomorrow, by Thursday.

You have all received a letter from the Attorney General (Mr. Scott). I think the clerk has distributed copies. The committee asked for the Attorney General to appear before the committee to discuss aspects of the constitutionality of this bill. I will read to you his reply.

"Dear Mr. Adams:

"The request in your letter of March 8, 1988, for a legal opinion from myself or my ministry on the constitutionality of Bill 109 has been given careful consideration.

"It has never been the practice for crown law officers or for the Attorney General to give such opinions to standing committees of the Legislature. I do not consider it advisable for such a practice to be developed. Your committee may wish to retain independent outside counsel.

"Yours very truly, Ian Scott, Attorney General."

That was the response to the committee's request of Mr. Scott.

I have one other matter here which has to do with the fact that although we have French translations for the government amendments that we discussed at our last meeting and on which we were briefed, if there are further amendments submitted today or tomorrow as we study this bill, I would like to suggest and seek your advice, given the makeup of the committee, that we consider the English versions and leave it to legislative counsel to produce acceptable translations in French. Is that an appropriate procedure?

1550

Mr. Campbell: I understand that some of these are being proposed as government amendments that do deal with the French language and some terms that are being used. Are you saying those would be included, in the normal course of events, in the numbers as numbered here? The four amendments would be included, as well as the English units, and both the French and the English are to be considered mere amendments; that is, the French follows the English and so on.

Mr. Chairman: That is correct. As I understand it, the French already exists for the amendments we have so far. I am trying to anticipate amendments for which the French might not exist.

Mr. Campbell: I think it is clear that some of those may be for the

French-language translation of the bill and would be housekeeping amendments. My understanding is that would be the case, so that is fine.

Mr. Jackson: I notice we have a letter with amendments from the Ontario Separate School Trustees' Association. Were these not discussed at last Monday's committee meeting?

Mr. Chairman: That is new to my knowledge. I have them here. I just put my material down.

Mr. Jackson: It indicates in the letter that a copy of these has been sent to the Minister of Education. My first question is, has the minister had an opportunity to examine these amendments?

Hon. Mr. Ward: Yes, we have had an opportunity to receive these amendments.

Mr. Jackson: Have you seen fit to incorporate any of the amendments? Have you been so moved?

Mr. Lamontagne: We have considered them individually.

Hon. Mr. Ward: Part of the difficulty, as you will recall, is that we had rather extensive pre-consultation on the bill. A number of issues were identified in that process. I cannot tell you, offhand, whether all of the amendments that are on the OSSTA brief include parts of the amendment package here.

Mr. Lamontagne: The amendments that were brought forward by OSSTA, that package you are referring to, were brought forward after these amendments were already done.

Mr. Jackson: Then at what point would we, as a committee, be able to examine these four to gauge some possible reaction on the part of the government, or the minister, I should say, in particular?

Hon. Mr. Ward: It has been my assumption that any member of this committee can take any submission that has been made, any piece of correspondence from any delegation that has come before it, and consider its input, and if the committee so desires, may use it as the basis for putting forward its amendments. There is nothing unusual in this. It happens, certainly in my experience as a member of the committee, virtually on every occasion.

Mr. Jackson: I am having a little difficulty. First of all, I was unable to be here last Monday when we did a walk-through of the government's copious amendments.

Mr. Chairman: I might point out that the other item you have there, as a result of Monday, is the amendments we went through the other day, with an explanatory note at the bottom of each page.

Mr. Jackson: Yes, I have that. I am trying to determine to what extent the OSSTA comments in fact are helpful to what we are doing here.

Hon. Mr. Ward: I am prepared to respond to each and every proposed

OSSTA amendment if Mr. Jackson or any other member of the committee wants to move them, if that is helpful at all.

Mr. Jackson: That would be helpful, and it would be appreciated, in the light of the fact that we do not have the benefit of the input of the Attorney General, and in the light of the fact that we still have lingering and considerable difficulty with amendments of subsections 1, 5 and 6 with respect to what the legal status really is of the one board-two sectors concept. Many of the amendments, as I understand them, work on a premise that is somewhat different from the premise set out by the government. I will take the minister's suggestion that if we are so moved, we can table them for purposes of comment and then vote if necessary.

Mr. Chairman: As you know, you are perfectly entitled to do that. If I could just say, I thought the walkthrough you mentioned was unusually detailed. It was a very long session we had and a great deal of care went into it. Is there any other preliminary discussion?

Mr. Reville: In the absence of Richard Johnston and Richard Allen for my party, may I request of the committee that it proceed with its clause-by-clause examination and voting on any subsections on the understanding that if they have amendments, your committee will look kindly on a reopening of those sections? That way you can proceed. I know Richard Allen is on his way and I am on my way out the door.

Mr. Campbell: If I might say, that was discussed and I think it is a fair way to deal with it, at least until Mr. Allen or Mr. Johnston arrive. I note as well that there is no motion 3 forthcoming. Not to reorder and renumber the pages and everything was the reason there is no number 3, just to ease the confusion.

Mr. Chairman: If I can for my own benefit interpret that aloud, what it means is that we will take votes, we will vote in principle, but should a representative of the official opposition care later to reopen the section, it would be reopened. Is that correct? OK. Can we begin now?

Standing orders provide for us to leave section 1, which is interpretation, until the end. I would like to suggest that as this is a new bill we should do that, because the definitions and so on which are in this section do of course depend on the clauses that appear later in the bill.

I suggest we move to section 2, which is on page 6; it is part I, section 2.

I think we should wait again. We know the official opposition will not be represented for a considerable time, but we do not know the third party will not be so represented. I think we should wait.

Mr. Campbell: I suggest we proceed. We are here. It is not disrespect to anybody here, but I think if we can extend the same courtesy to the third as we did to the opposition and reopen if there is any other comment—

Mr. Chairman: Cam Jackson is back here. OK?

Section/article 2:

Mr. Chairman: The first notice I have of amendment is in fact in

section 3, but if I could begin by calling section 2. Is there any discussion, comments, amendment of section 2? OK. Could I call a vote on section 2? Those in favour of section 2 as it stands? Carried.

Section 2 agreed to.

L'article 2 est adopté.

Section/article 3:

Mr. Chairman: I call section 3. The amendment I have is amendment 3 which comes into subsection 3(3). Could I call the first two subsections of section 3? Discussion? Those in favour? Carried.

Mrs. O'Neill moves that subsection 3(3) of the bill be amended by inserting after "public" in the second line "elementary and secondary".

Mr. Chairman: Any discussion of Yvonne O'Neill's amendment? I call the amendment. Those in favour? Five.

Motion agreed to.

1600

Mr. Chairman: I have notice of amendment to subsection 3(4).

Mrs. O'Neill moves that subsection 3(4) of the bill be amended by inserting after "Catholic" in the second line "elementary and secondary."

Motion agreed to.

Mr. Chairman: For the benefit of the recorders, I will proceed a little more slowly. I will call subsection 3(5). Discussion? Those in favour? Those against? Carried.

I have notice of amendment, of two new subsections to section 3.

Mrs. O'Neill moves that section 3 of the bill be amended by adding thereto the following subsection:

"(6) Any power, duty or right assigned to the public sector or to the Roman Catholic sector is within the exclusive jurisdiction of the members of the sector to which it is assigned, and a decision of those members with regard to that power, duty or right is the decision of the French-language board.

"(7) Any power, duty or right assigned to the full board is within the exclusive jurisdiction of the full board and a decision of the full board with regard to that power, duty or right is a decision of the French-language school board."

Motion agreed to.

Mr. Chairman: Are there any other amendments to section 3? Those in favour of section 3, as amended, in its entirety? Those against?

Section 3, as amended, agreed to.

L'article 3, modifié, est adopté.

Section/article 4:

Mr. Chairman: I have notice of an amendment for subsection 4(1).

Mr. Campbell moves that subsection 4(1) of the bill be amended by striking out "public schools and classes" in the second and third lines and by striking out "Roman Catholic schools and classes" in the fourth and fifth lines and by inserting in lieu thereof in each case "the schools and classes that it governs."

Motion agreed to.

Mr. Chairman: I have notice of amendment in paragraph 4(1)6.

Mr. Campbell moves that paragraph 6 in subsection 4(1) of the bill be amended by striking out "religious instruction" and inserting in lieu thereof "school attendance."

If you could hold that amendment in your minds, I should first have brought forward the preceding paragraphs 4(1)1 through 5. Those in favour of those paragraphs? Against? Carried.

Discussion of Sterling Campbell's amendment? Those in favour? Against?

Mr. Jackson: I have a question. Does the concept of religious instruction and visitors resurface, or are we just dropping it? What is the rationale?

Hon. Mr. Ward: The concept does resurface in the provisions of the Education Act.

Mr. Jackson: I knew that was so with visitors, but on religious instruction?

Hon. Mr. Ward: Yes. Paragraphs 4(1)13 and 14.

Mr. Chairman: I will call that again. Those in favour of Sterling Campbell's amendment? Those against?

Motion agreed to.

Mr. Chairman: Could I now call paragraphs 4(1)7 through 14? Discussion? Those in favour? Against? Carried.

I have notice of an amendment for paragraph 4(1)15.

Mr. Campbell moves that paragraph 15 of subsection 4(1) of the French version of the bill be amended by striking out "conseils" wherever it appears and inserting in lieu thereof in each case "comités."

Motion agreed to.

Mr. Chairman: I would now call, to complete this subsection, paragraphs 4(1)16 through 29. Any discussion? Those in favour? Against? Carried.

As this is a fairly long section, I would now call subsection 4(1), as amended, because we are coming up to subsection 4(2). Could I call 4(1) as amended? Those in favour? Against? Carried?

I now call subsection 4(2) as far as paragraph 4(2)2. Any discussion? Those in favour? Against? Carried.

That has got us to paragraph 4(2)2, OK? I have notice of an amendment at paragraph 4(2)3.

Mr. Campbell moves that paragraph 3 of subsection 4(2) of the bill be struck out.

Discussion of Sterling Campbell's amendment? Those in favour? Against?

Motion agreed to.

Clerk of the Committee: Can I clarify? It is not necessary to move an amendment to a section if you wish to remove it. Simply vote against the section and it will be automatically removed.

Mr. Chairman: But we have the same effect this way, do we not?

Clerk of the Committee: Yes.

Mr. Chairman: Well, that is fine. Let us leave it as it stands.

Mr. Campbell: I think it is easier for us to follow.

Mr. Chairman: Could I call subsection 4(2), as amended? Those in favour? Against? Carried.

I now call subsection 4(3) as far as and including paragraph 10. Those in favour? Against? Carried.

I have notice of amendment for paragraph 11 of that subsection.

Mr. Campbell moves that paragraph 11 of subsection 4(3) of the bill be amended by striking out "of employees" and inserting in lieu thereof "of its employees."

Motion agreed to.

Mr. Chairman: I also have notice of amendment for paragraph 4(3)12. Does someone care to move that?

Mr. Campbell moves that paragraph 12 of subsection 4(3) of the bill be amended by striking out "of employees" and inserting in lieu thereof "of its employees."

Motion agreed to.

Mr. Chairman: Could I call then subsection 4(3), as amended? Those in favour? Against? Carried.

I call now subsections 4(4) through (11).

Mr. Jackson: I noticed that we have a recommended amendment from the Ontario Separate School Trustees' Association, which I would invite the minister to respond to, if he would. It is up to you if you wish me to put the amendment formally. It calls for 21 instead of 19 items to be recorded in the bill that would not be delegated to the other sectors.

1610

Mr. Chairman: Could you locate the paragraph?

Mr. Jackson: It is subsection 4(4).

Mr. Chairman: Does everyone have the place? Page 14, subsection 4(4), "Transfer of jurisdiction."

Mr. Jackson moves that subsection 4(4) of the bill be amended by striking out "19" and inserting in lieu thereof "21."

Hon. Mr. Ward: Again, I am not sure whether the committee members all have the formal responses that we included with the package, but for the sake of the record, I note that this amendment would make paragraph 19, determining the terms of employment of teachers and other employees, and paragraph 20, that being collective bargaining, exclusive matters which could not be delegated by the sectors to the full board.

The government's position is that this subsection should not be changed. The local position is to maintain as much flexibility as possible, where possible, for collaborative efforts. Subsection 4(5) allows the sectors to set any conditions that both must agree to before such matters can be placed in common.

Mr. Chairman: Discussion of Mr. Jackson's amendment? Those in favour? Those against? The amendment is defeated by four to one.

Motion negatived.

Mr. Chairman: If I might, I call then subsections 4(4) through (12). I previously called through subsection 4(11), but in fact I see the amendment involves a new section, so it would be subsections 4(4) through (12).

Mr. Jackson: I have a further amendment, on which I seek the minister's clarification. In order to do so, I will move it.

Mr. Chairman: Mr. Jackson moves that subsection 4(5) of the bill be amended by striking out "if both resolutions so provide."

Mr. Jackson: I invite the minister to comment on why this amendment was not looked upon favourably.

Mr. Chairman: We are back at subsection 4(5).

Hon. Mr. Ward: My understanding is that we agreed there should be clarification. I believe the concern we had was over the wording as put forward by the Ontario Secondary School Trustee's Association. I think Mr. Campbell has some preferred wording. You might consider Mr. Campbell's as a friendly amendment if you want to hear his wording.

Mr. Jackson: I would like to hear it, sure.

Mr. Campbell: I move that subsection 4(5) of the bill be amended by adding at the end thereof "but there shall not be a transfer of jurisdiction under subsection 4(4) unless the resolutions are subject to the same conditions."

Mr. Chairman: I have Mr. Jackson's motion on the floor. That was a friendly amendment.

Mr. Jackson: I accept the friendly amendment.

Mr. Chairman: Will you withdraw yours?

Mr. Jackson: I withdraw mine.

Mr. Chairman: Mr. Campbell moves that subsection 4(5) of the bill be amended by adding at the end thereof "but there shall not be a transfer of jurisdiction under subsection 4(4) unless the resolutions are subject to the same conditions."

May I ask the recorders and others, do you have that?

Clerk of the Committee: I have it now.

Mr. Chairman: Is there any discussion of Mr. Campbell's amendment to subsection 4(5)? Those in favour? Those against?

Motion agreed to.

Mr. Chairman: I assure you I am not trying to press this on, and please feel free to stop me when I call a certain section. I am going to call for subsections 4(6) through (12). Is there anything in there that you care to discuss?

Mr. Jackson: Yes. To be more co-operative, I intend to table each of the OSSTA amendments and not even speak to them but merely invite the minister to give his quick response. I think that would be helpful.

Mr. Chairman: You are suggesting that I call them when we get to them. OK.

Mr. Jackson: I know the clerk is more than pleased to assist in this regard, and legislative counsel is here to comment if the minister needs help. I prefer that it be done in such a manner, given that we have not, as a committee, examined it.

Mr. Chairman: Does the minister want to comment on that or something related?

Hon. Mr. Ward: I cannot speak to the extent to which the whole committee has examined them, but in the interest of assisting everyone, we will make arrangements to have a package. I believe the package you have already has on it the government responses to the OSSTA brief. If it does not, we will see that each member of the committee has one. Further to that, there are a number of amendments in the OSSTA package which we intend to support.

However, some of them do not have the preferred wording. We will make available to Mr. Jackson, as well as to other members of the committee, those sections of OSSTA amendments which we support but on which we have concerns over the language so that everybody will have them. Then Mr. Jackson can make his judgement when he is introducing them as to whether he prefers the preferred language as well. That might facilitate the exercise for all of us.

Mr. Jackson: That is a lot more helpful, and I appreciate it. I just wanted to make sure we had an opportunity to examine it.

Mr. Campbell: As for the clarification, as we just did with our motion 12, we got that clarification there; maybe that system can work.

Mr. Chairman: That is fine. Discussion of subsections 4(4) through (9)? Those in favour? Against? Carried.

Mr. Jackson moves that subsection 4(10) of the bill be struck out and the following substituted therefore: "Part XI does not apply to paragraph 4(2)1."

Is there discussion of Mr. Jackson's amendment?

Hon. Mr. Ward: Again, this is part of the package for which we have provided notes. Basically, we agree that this subsection is covered by subsection 54(1) and it could be construed as redundant. Do we have a prepared amendment?

Mr. Lamontagne: Yes.

Hon. Mr. Ward: Our concern is towards the reference to part XI. We believe it is essential that disputes regarding matters under subsection 4(2) still be referred under part XI, so our preferred wording is merely, "I move that subsection 4(10) of the bill be struck out," if Mr. Jackson would prefer to move that and delete subsection 4(10). If not, we recommend that the amendment as put be defeated and that we substitute a subsequent amendment.

Mr. Chairman: Mr. Jackson, as you wish.

Mr. Jackson: I thought I just understood the minister to say that to delete subsection 4(10) would be satisfactory.

Hon. Mr. Ward: Yes.

Mr. Jackson: OK, I would be amenable to that.

Mr. Chairman: Will you withdraw your amendment?

Mr. Jackson: Yes.

Mr. Chairman: Mr. Jackson moves that subsection 4(10) of the bill be struck out and the subsequent sections be renumbered accordingly.

Hon. Mr. Ward: If I might, further to the package of OSSTA amendments with the government's comments on the bottom, I will circulate to members of the committee another package of amendments which will also show preferred wordings on those that will be accepted. Of course, on some of them, if it is a straightforward acceptance, that may help.

Mr. Chairman: Could I hold these just a moment and could we proceed with this amendment first? OK? We have Cam Jackson's amendment. Do people understand what is happening? He simply moves that this subsection be struck out and that the appropriate renumbering take place.

Motion agreed to.

Mr. Chairman: Now, these refer to the OSSTA?

Hon. Mr. Ward: These are portions of the OSSTA brief that the government can support, some of them with wording changes.

Mr. Chairman: Thank you. I will just take one. We will pause a moment while members of the committee arrange their papers in the light of this new material. I would like to do the same.

The committee recessed at 4:21 p.m.

1623

Mr. Chairman: OK, ladies and gentlemen, we can reconvene, and with the additional amendments I see we have notes of amendment for subsection 4(11). Would someone care to move that?

Mr. Campbell moves that subsection 4(11) of the bill be amended by inserting after "(4)," in the second line, "(5)."

Discussion of Sterling Campbell's amendment? Those in favour? Excuse me.

Mr. Campbell: Hold it. Do you have that in front of you?

Mr. Jackson: Yes, I have it in front of me, but I am also looking at an OSSTA one which refers to deleting "(8)" and inserting in lieu thereof "(5) and (7)," so I am just—

Mr. Chairman: Yes, please take your time.

Mr. Jackson: In fairness, I have just had the government documents, which are further amendments, and I need to absorb this.

Hon. Mr. Ward: Excuse me, Mr. Chairman. The government documents are just responses in terms of the OSSTA's suggested amendments.

Mr. Jackson: I just heard a government amendment placed, and the chairman called the vote before I even understood what the amendment was. I am not comfortable proceeding unless I understand it. I just would read it, with the chairman's indulgence.

Mr. Chairman: Please feel free.

Mr. Jackson: What does this amendment do, if I can ask the mover.

Mr. Campbell: Pardon me. Subsection 4(11)?

Mr. Chairman: Page 16.

Mr. Campbell: I would take the explanation from the minister, if I might, for a full explanation.

Hon. Mr. Ward: Again, it is indicated on the material that will be distributed that while we view this as not essential, we are suggesting that legislative counsel add a reference to subsection 4(5) that clarifies its intent, again on the basis of the OSSTA submission.

Mr. Jackson: I can read—they are not really complex words—what it does to arbitration, but I am trying to figure out where subsections 4, 5, 7

and 8 all fit into this. Because I understand the words, I would like to know what I am taking out that will be affected by arbitration.

Mr. Chairman: Is it the figures, rather than the words, Mr. Jackson, that are complex?

Mrs. O'Neill: Subsections 4, 5 and 8 on page 14 of the bill are what we are talking about.

Hon. Mr. Ward: The reference to subsection 8, if you look at the note just under the amendment —

Mr. Jackson: Yes, I can see that.

Hon. Mr. Ward: —"is redundant since no decision of the sectors occurs under it, but decisions do occur under subsection (5) and subsection (7) which are not intended to be arbitrable," if that is the word. All right?

Mr. Jackson: I have it now.

Motion agreed to.

Mr. Chairman: Now, so that we all know what I am doing, I will now call subsection 4(12), because it is my understanding we have amendments suggesting further subsections.

Mr. Campbell: I have renumbered my sections. Just to be sure, it would be the old 12?

Ms. Baldwin: May I speak to that?

Mr. Chairman: Yes, please.

Ms. Baldwin: Generally speaking, when we deal with motions in committee our practice is not to worry about renumbering. We will take care of that in the reprinted bill. Stick with the numbers you have.

Mr. Campbell: That is fine. You got it.

Mr. Chairman: Does everyone get that? We are dealing with the printed numbers, so it is subsection 12, as printed. Discussion of subsection 12? Those in favour? Against? Carried.

I have notice of amendment, a new section.

Mr. Campbell: New subsections 4(13) and (14).

Mr. Chairman: Mr. Campbell moves that section 4 of the bill be amended by adding thereto the following subsections:

"(13) Religious instruction is within the exclusive jurisdiction of the public sector in respect of the schools and classes that it governs.

"(14) Religious education is within the exclusive jurisdiction of the Roman Catholic sector in respect of the schools and classes that it governs."

Motion agreed to.

Mr. Chairman: I have notice of a further amendment of section 4.

Mr. Campbell: I have two. Which way do you wish to proceed, because I do have subsections 4(15) to 4(18) and I also have a section 17 of the bill? I felt that I would deal with motion 14 first, before dealing with your other ones here.

Hon. Mr. Ward: That is a different section.

Mr. Chairman: That is 17, that is the next section, so if we keep to what is—

Mr. Campbell: We will deal with section 4 of the bill.

Mr. Chairman: Mr. Campbell moves that section 4 of the bill be amended by adding thereto the following subsections:

"(15) The full board shall exercise exclusive jurisdiction on behalf of the French-language board in respect of the acquisition of real or personal property that is to be used by the full board.

"(16) The public sector or the Roman Catholic sector shall exercise exclusive jurisdiction on behalf of the French-language board in respect of the acquisition of real or personal property that is to be used by that sector.

"(17) The full board shall exercise exclusive jurisdiction on behalf of the French-language board in respect of the sale, lease or disposal of real or personal property that was acquired by the full board or reallocated to the full board under part XII.

"(18) The public sector or the Roman Catholic sector shall exercise exclusive jurisdiction on behalf of the French-language board in respect of the sale, lease or disposal of real or personal property that was acquired by that sector or was allocated to that sector and not re-allocated to the full board under Part XII."

Motion agreed to.

Section 4, as amended, agreed to.

L'article 4, modifié, est adopté.

Sections 5 and 6 agreed to.

Les articles 5 et 6 sont adoptés.

Section/article 7:

1630

Mr. Chairman: Mr. McGuinty moves that subsection 7(1) of the bill be amended by adding "or" at the end of clause (a), by striking out "or" at the end of clause (b) and by striking out clause (c).

Motion agreed to.

Mr. Chairman: I call subsection 7(1), as amended. Those in favour? Against? Carried.

Mr. McGuinty moves that subsection 7(2) of the bill be amended by adding "or" at the end of clause (a), by striking out "or" at the end of clause (b) and by striking out clause (c).

Motion agreed to.

Mr. Chairman: Mr. McGuinty moves that section 7 of the bill be amended by adding thereto the following subsection:

"(2a) A person who is the child of a French-speaking person is qualified to be a resident pupil in respect of a secondary school operated by the public sector or by the Roman Catholic sector if the person is over 18 years of age and has resided in the region for the 12 months immediately before his or her admission to a school operated by that sector or to a school operated by a board to which that sector pays fees on the person's behalf."

Mr. Jackson: I have a question. Could someone just briefly explain to me the implications of this amendment.

Hon. Mr. Ward: Subsection 7(2a)?

Mr. Jackson: Yes.

Hon. Mr. Ward: That is just the unnecessary repetition that we saw in subsections 7(1) and 7(2). Actually, both subsections 7(2a) and 7(2b), as already amended, establish exactly the same thing.

Mr. Jackson: Does this imply that if someone over the age of 18 wants to apply for adult education or continuing education, he can receive that by the French-language board? Is that what is implicit here?

Hon. Mr. Ward: Yes. Again, it is just a repetition of a previous subsection.

Mr. Jackson: Therefore, they would be allowed to change their designation as a francophone school supporter.

Hon. Mr. Ward: Again, the person has to be the child of a French-speaking person.

Mr. Jackson: It could be a 60-year-old child with an 80-year-old parent. I am just trying get an image of this thing. OK?

Hon. Mr. Ward: Yes.

Mr. Jackson: We could be talking about a 60-year-old child of 80-year-old parents who transfer their designation in order that the 60-year-old has access to continuing or adult education programs in the French-language board. Is that correct? That would give force and effect to that?

Hon. Mr. Ward: Yes.

Motion agreed to.

Mr. Chairman: So that I know what I am doing, I am going to call for subsection 7(2) in its entirety, and then after we vote on that, I am going to call on the new subsection, which is 7(2a), as amended, in its entirety.

I will call subsection 7(2), as amended, in its entirety. Those in favour? Against? Carried.

I now call the new subsection 7(2a) in its entirety. Those in favour? Against? Carried. Is that OK?

I now call subsection 7(3). Discussion? In favour? Against? Carried.

Subsection 7(4). In favour? Against? Carried.

Subsection 7(5). In favour? Against? Carried.

Section 7, as amended, agreed to.

L'article 7, modifié, est adopté.

Mr. Chairman: OK? Everyone all right there?

Clerk of the Committee: Yes, it is fine.

Mr. Chairman: Good stuff. I am glad that some people know where we are.

Section/article 8:

Mr. Chairman: On section 8, I have notice of an amendment.

Mr. McGuinty: Section 8, Mr. Chairman?

Mr. Chairman: Section 8, if you would; page 20.

Mr. McGuinty moves that section 8 of the bill be amended by striking out "an elementary" in the second line and in the next to last line and by inserting in lieu thereof in each case "a."

Motion agreed to.

Section 8, as amended, agreed to.

L'article 8, modifié, est adopté.

Section/article 9:

Mr. Chairman: I call subsections 9(1) to (4). Any discussion? Those in favour? Against? Carried. I have notice of an amendment of subsection 9(5).

Mr. McGuinty moves that subsection 9(5) of the bill be struck out and the following substituted therefor:

"(5) Section 1360 of the Education Act applies with necessary modifications to the French-language board to permit a person who is the child of a French-speaking person to transfer,

"(a) from one sector to another;

"(b) from the public sector to the Ottawa Roman Catholic Separate School Board or the Carleton Roman Catholic Separate School Board, if the person resides within the area of jurisdiction of that separate school board;

"(c) from the Ottawa Roman Catholic Separate School Board or the Carleton Roman Catholic Separate School Board to the public sector;

"(d) from the Roman Catholic sector to the Ottawa Board of Education or the Carleton Board of Education, if the person resides within the area of jurisdiction of that board of education;

"(e) from the Ottawa Board of Education or the Carleton Board of Education to the Roman Catholic sector."

Discussion of Dalton McGuinty's amendment?

We will take a very short recess until a member of an opposition party appears. Let's say two minutes.

The committee recessed at 4:38 p.m.

1656

Mr. Chairman: Ladies and gentlemen, if we can resume after our recess. We are considering Mr. McGuinty's amendment to subsection 9(5), and that deals with section 136o of the Education Act. Is there any discussion? Those in favour of Dalton McGuinty's amendment?

Mr. Allen: Could I just ask what the content of the motion is?

Hon. Mr. Ward: It is motion 19 in the package that was distributed.

Mr. Allen: Dalton is moving it for the government?

Hon. Mr. Ward: Yes.

Mr. Allen: OK. That is fine.

Hon. Mr. Ward: It is just the amendment we dealt with to make clear the open—

Mr. Allen: I thought perhaps it was an individual item.—

Mr. Chairman: Mr. Allen, I am sorry I had forgotten you are catching up. Is that OK?

Mr. Allen: That is fine.

Mr. Jackson: Has it been explained about the documents from the government in response to the Ontario Separate School Trustees' Association —

Mr. Chairman: Yes. I have mentioned that and I have mentioned what had happened about the OSSTA amendments.

Mr. Allen: OK. Here we are.

Mr. Chairman: Mr. Allen, are you comfortable with the OSSTA amendment point and the ministry responses to those?

Mr. Allen: Yes. Excuse me for being delayed, but what with governors general in Hamilton and foreign potentates in Toronto, your humble servant hath had numerous delays.

Hon. Mr. Ward: You did not get an escort?

Mr. Chairman: This is the real summit here.

Mr. Jackson: He does not have the government document on OSSTA.

Mr. Chairman: The government?

Mr. Jackson: The government response.

Mr. Chairman: I only have one.

Clerk of the Committee: If you give me a minute, I will get it Xeroxed.

Mr. Jackson: Is there one sitting there that Carman is no longer using?

Hon. Mr. Ward: Here. Let Richard have this for now.

Clerk of the Committee: No. That is not the one. Just discuss it and I will be right back.

Mr. Allen: It is OK. Go ahead.

Mr. Campbell: I was going to suggest that there is quite a way to go before we get back to the OSSTA. Perhaps we could use that opportunity to keep going and then as well go with—

Mr. Chairman: I am quite willing to do so if Mr. Allen feels comfortable. The point is that we do not need the material the clerk is bringing for some time.

Mr. Allen: It is OK.

Mr. Chairman: Any further discussion of subsection 9(5), Mr. McGuinty's amendment? Those in favour? Against? Carried.

Motion agreed to.

Section 9, as amended, agreed to.

L'article 9, modifié, est adopté.

Section/article 10:

Mr. Chairman: I have notice of an amendment to section 10.

Mrs. O'Neill moves that section 10 of the bill be amended by striking

out "an elementary" wherever it appears and inserting in lieu thereof in each case "a."

Is there any discussion of that? Those in favour? Against? Carried.

Motion agreed to.

Section 10, as amended, agreed to.

L'article 10, modifié, est adopté.

Sections 11 to 16, inclusive, agreed to.

L'articles 11 à 16, inclusivement, sont adoptés.

1700

Section/article 17:

Mr. Chairman: I have notice of an amendment.

Mrs. O'Neill moves that the definition of "public system" in subsection 17(1) of the bill be amended by striking out "school" in the first line.

Motion agreed to.

Mr. Chairman: I have an Ontario Separate School Trustees' Association amendment. I have a notation here, in subsection 17(2), of OSSTA's. Does anyone want to do anything about that?

Mrs. O'Neill: No. My next one is subsection 17(3).

Mr. Chairman: I am quite willing to wait. This has to do with subsection 17(2).

Mr. Jackson: This was rejected by the minister. If I may ask, subsection 17(3) addresses something similar but not identical to what OSSTA recommended?

Mr. Chairman: That is correct.

Interjection.

Mr. Jackson: No. I want to ask the minister why subsection 17(2) as recommended by OSSTA was not considered? Was it in fact considered?

Hon. Mr. Ward: It was considered and the concern was that the amendment as suggested by OSSTA was unconstitutional. We recognize that there were some concerns about the ambiguity. Legislative counsel prepared an additional subsection to section 17 which will clarify that one cannot support a school system unless one is so qualified. Therefore, the amendment put forward by Mrs. O'Neill is intended to do that.

Mr. Jackson: I am trying to locate where it refers to tenants in the suggested amendment, but I do not see it.

Interjection.

Mr. Jackson: Oh, as tenants, in the region as tenants, "one or more of whom is otherwise entitled to be a supporter...." Both of you are saying it is unconstitutional.

Hon. Mr. Ward: I think you understand what the concern is by OSSTA. We are making it clear that a person may not choose to support a school system under subsection 17(2) unless he or she is entitled to support that school system. I believe it clarifies the intent that a person can only choose to support a sector in the French-language board or one in the English-language boards if the person is qualified to support that system.

Mr. Jackson: I am satisfied with that explanation.

Mr. Chairman: I am going to call subsection 17(2) in order that we can then proceed to the next amendment which I understand is a new subsection. I call subsection 17(2). Those in favour? Against? Carried.

Mrs. O'Neill moves that section 17 of the bill be amended by adding thereto the following subsection:

"(3) A person may not choose to support a school system under subsection (2) unless he or she is entitled to support that school system."

Motion agreed to.

Section 17, as amended, agreed to.

L'article 17, modifié, est adopté.

Sections 18 to 22, inclusive, agreed to.

L'articles 18 à 22, inclusivement, sont adoptés.

Section/article 23:

Mr. Chairman: I see that there is notice of amendment to section 23. Would someone care to move it?

Mrs. O'Neill: Are we going to take subsections 23(1) and (2), because this is an addition?

Mr. Chairman: Very good. I will call subsections 23(1) (2) in order that we can consider an amendment for a new subsection. Any discussion? In favour? Against? Carried.

Mrs. O'Neill moves that section 23 of the bill be amended by adding thereto the following subsection:

"(3) A sector shall not sell, lease or otherwise dispose of a building or part thereof other than to the other sector unless, in addition to any other approval that may be required, the sector has obtained the approval of the minister."

Motion agreed to.

Section 23, as amended, agreed to.

L'article 23, modifié, est adopté.

Sections 24 and 25 agreed to.

L'articles 24 et 25 sont adoptés.

Section/article 26:

Mr. Chairman: I have notice of an amendment for section 26.

Mrs. O'Neill moves that section 26 of the bill be amended by adding at the beginning "Subject to this act."

Motion agreed to.

Section 26, as amended, agreed to.

L'article 26, modifié, est adopté.

Sections 27 to 34, inclusive, agreed to.

L'articles 27 à 34, inclusivement, sont adoptés.

Mrs. O'Neill: I will be moving sections 35 to 37. This is a major change in quantity, but what we have done here is we are trying to make these sections now conform to Bill 125, which was not passed at the time of the introduction of this legislation.

I think I would ask that these following pages be read into the record. They are very technical. If anyone has any questions, we will try to answer them, but it really is the complete removal of sections 35, 36 and 37 and these put in. As I say, they are the technicalities of how the electoral groups will be represented on the school board according to and in conformity with Bill 125.

Mr. Campbell: Because of the length of the section, could we somehow have these taken as read and the present sections 35, 36 and 37 struck?

Mrs. O'Neill: I just requested that.

Mr. Campbell: Just to clarify that.

Ms. Baldwin: I am afraid, with a motion like this, you have to read it into the record in order to get it—

1710

Mr. Chairman: Legislative counsel advises that you should read it.

Mrs. O'Neill: I cannot just request it; I have to read it. OK, away we go.

Sections/articles 35, 36, 37:

Mr. Chairman: Mrs. O'Neill moves that sections 35, 36 and 37 of the bill be struck out and the following substituted therefor:

"35(1) Subject to subsections 2, 3 and 4, Part VII-A of the Education

Act applies with necessary modifications to the French-language board as if,

"(a) the French-language board were a divisional board that is required to establish an English-language section and that is exercising jurisdiction in an area where there is no coterminus Roman Catholic separate school board that is a Roman Catholic school board; and

"(b) a supporter or elector of the public sector were a public school supporter or public school elector, as the case may be, and a supporter or elector of the Roman Catholic sector were a separate school supporter or separate school elector, as the case may be.

"(2) For purposes of applying rule 6 of subsection 206a(6), subsections 206a(13), (14), (17) and (21) and section 206d, a reference in that rule, those subsections and that section to a board shall be deemed to be a reference to a sector.

"(3) For purposes of applying rule 11 of subsection 206a(8), a reference in that rule to the number three shall be deemed to be a reference to the number eight and for the purposes of applying rule 13 of subsection 206a(8), a reference in that rule to the number one shall be deemed to be a reference to the number eight.

"(4) For purposes of applying the provisions of the regulation made under clauses 10(10)(a) and (b) of the Education Act, a reference in those provisions to the director of education of a board and to the secretary of the board shall be deemed to be a reference to the director of education and the secretary of the public sector in respect of a determination or distribution for the public sector and to the director of education and the secretary of the Roman Catholic sector in respect of a determination or distribution for the Roman Catholic sector.

"36(1) In this section, 'planning committee' means the Ottawa-Carleton French-language education planning committee established by the minister and constituted by order in council 229/88.

"(2) For the regular election to be held in 1988 and for filling vacancies before December 1, 1991, if the number of members representing a sector for an area municipality is two or more, the minister may by order divide the municipality into two or more electoral areas and the electoral areas shall be deemed to be electoral areas established prior to the 2nd day of February, 1988, by the council of the municipality at the request of the sector.

"(3) The minister, on the recommendation of the planning committee, may, by order, increase or decrease the number of members determined to be elected for a sector under rules 1 to 10 of subsection 206a(8) by one or two members for the purposes of the regular election to be held in 1988 under the Municipal Elections Act.

"(4) For purposes of the regular election to be held to in 1988 under the Municipal Elections Act, the minister may, by order, exercise the same power as a sector could have exercised under subsections 206a(13) and (14) if the sector had been in existence on the day this act comes into force, and an order of the minister under this section shall be deemed to be a resolution of the sector to which it applies passed under subsection 206a(13) or (14), as the case may be.

"(5) For the regular election to be held in 1988, if a calculation or a distribution or both are not made or an application is made under section 206c of the Education Act and the judge does not deal with it within the time required by subsection 206c(3), the minister shall make the calculation or distribution or both, as the case may be.

"(6) Despite subsection 35(4), for purposes of the regular election to be held in 1988 and the application of the provisions of the regulation made under clauses 10(10)(a) and (b) of the Education Act, a reference in those provisions to the director of education of a board and to the secretary of the board shall be deemed to be a reference to the chairmen of the French-language education councils of the Ottawa Board of Education and the Carleton Board of Education in respect of a determination or distribution for the public sector and to the chairmen of the French-language education councils of the Ottawa Roman Catholic Separate School Board and the Carleton Roman Catholic Separate School Board in respect of a determination or distribution for the Roman Catholic sector.

"(7) Subsection 41(1) of the Education Statute Law Amendment Act, 1988 applies with necessary modifications in respect of the French-language school board."

Mr. Chairman: Well done. We missed a couple of pieces in the middle there.

Mr. Campbell: For clarification, I do not want to obstruct here, but I wonder what the rationale is if, for example, one word was missed. Does that mean there is a problem with that? I am trying to get a reason why you cannot just put a long section like that into the record and say it has been read. What happens if she missed the word "a" in a line 92? Does that screw it all up?

Clerk of the Committee: There would be a good argument made that it was never intended to be there.

Ms. Baldwin: If there are minor editorial problems that arise, for example, as a result of the meeting, that is something that legislative counsel is able to correct upon the reprinting of the bill. However, it is important for the record, as I understand it, that the motion in its entirety be read in so that in the record there be no confusion as to what was passed.

Mr. Campbell: I am satisfied.

Mr. McGuinty: I note that there are two misplaced modifiers and misuse of the subjunctive. That would not nullify the intent.

Mr. Chairman: I am afraid that as we are waiting for a member of the Conservative Party, we have to wait again before the vote. I know we have a quorum, but I think it would be better for this historic bill if we have representatives of all three parties.

Mr. Allen: In terms of our last little discussion, I do not want to be picky, but "electoral area" was read "electoral district," for example. It has to be caught and edited out.

Mr. Chairman: Quite. I will not call a recess, if you do not mind,

because the last time I did, the committee disappeared. I would wait until Cam Jackson returns.

Interjections.

Mr. Chairman: If we could reconvene, the suggestion is that we proceed and we will vote in principle. Cam Jackson may reopen the various sections if he wishes.

We have before us Yvonne O'Neill's long amendment. It is to replace the present sections 35, 36 and 37. Is there any discussion of that amendment?

Motion agreed to.

Mr. Campbell: I was going to ask for a re-read.

Mrs. O'Neill: Thank you very much.

1720

Section/article 38:

Mr. Chairman: As we have replaced those sections, I proceed to page 56 of the bill, section 38. I will call subsections 38(1) through (4). Any discussion? Those in favour? Against? Carried.

Cam, we have proceeded in principle, giving you permission to reopen if you wish.

Mr. Jackson: I do not need any special attention.

Hon. Mr. Ward: Sure you do.

Mrs. O'Neill: We are doing that for both—

Mr. Jackson: We did not wait for Mr. Allen. I presume the whole bill can be opened at the very end.

Mr. Chairman: We are at page 56. We have just passed subsections 38(1) through (4) and we are proceeding now. I have notice of an amendment for subsection 38(5).

Mrs. O'Neill moves that subsection 38(5) of the bill be amended by striking out "indicate" in the first line and inserting in lieu thereof "include."

Motion agreed to.

Mr. Chairman: I would now call subsections 38(4) through (6). Discussion? Those in favour? Against? Carried.

I call section 38 in its entirety, as amended.

Now, did I do that right? I am sorry; no, I did not. I said to subsection 6 and I meant to subsection 7. I am sorry, I missed out subsection 7. Excuse me, ladies and gentlemen. I missed subsection 38(7). I will rephrase that.

I call subsections 38(6) and (7), if I might. Those in favour? It is the same thing. Those against? Carried. Thank you.

Section 38, as amended, agreed to.

L'article 38, modifié, est adopté.

Section 39 agreed to.

L'article 39 est adopté.

Section/article 40:

Mr. Chairman: I think I call subsections 40(1) and (2), unless there is an amendment to those. Discussion? Those in favour? Against? Carried.

I have notice of an amendment.

Mrs. O'Neill: Subsections 40(2a) and (2b).

Mr. Chairman: Mrs. O'Neill moves that section 40 of the bill be amended by adding thereto the following subsections:

"(2a) Despite subsection (2), the full board shall allocate its estimates in respect of maintaining a sector's buildings and premises and furniture and equipment to that sector.

"(2b) The full board shall allocate its estimates to the sectors separately for elementary and secondary school purposes."

Motion agreed to.

Mr. Chairman: Do I have a notation of an amendment to subsection 3?

Mrs. O'Neill: Yes, you do.

Mr. Chairman: Mrs. O'Neill moves that subsection 40(3) of the bill be amended by striking out "subsection (2)" in the second line and inserting in lieu thereof "subsections (2) and (2a)."

Motion agreed to.

Mr. Chairman: I guess I call subsection 4. Those in favour? Against? Carried.

I have notice of an amendment.

Mrs. O'Neill: I move that subsections 40(5) and (6) of the bill be struck out and the following substituted therefor:

"(5) Sections 127 and 136k of the Education Act apply with necessary modifications to the Roman Catholic sector.

"(5a) Sections 128 and 130 to 133 of the Education Act apply with necessary modifications to the public sector and the Roman Catholic sector for elementary and secondary school purposes as if they were both separate school boards."

Mr. Chairman: Discussion? Those in favour? Against? Carried.

Clerk of the Committee: Oh no, hang on.

Mr. McGuinty: It is not complete.

Mrs. O'Neill: Oh, I am sorry. It is just a different type on mine that confused me for a moment.

"(6) In 1989 the sector shall use the"—

Mr. Chairman: Just for a moment, Yvonne. We withdraw—

Mrs. O'Neill: We are withdrawing subsections 5 and 6 there.

Mr. Chairman: Yes, I have it.

Mrs. O'Neill: I have just read subsection 5. Unfortunately, I missed subsection 6.

Mr. Chairman: Yes, thank you.

Mrs. O'Neill: "(6) In 1989, the sector shall use the factors determined by the minister for the purposes of section 130 of the Education Act.

"(6a) The minister may determine equalizing factors to be used by the public sector"—

Clerk of the Committee: This is not the amendment we have.

Hon. Mr. Ward: Government motion 28.

Mrs. O'Neill: I am going to try it one more time.

Mr. Chairman: Can we pause one moment? Mr. Jackson, are you clear?

Mr. Jackson: I have no problem at all.

Mr. Chairman: Good stuff. Mr. Allen, there are subsections 6, 6a and 6b on this version. OK?

Mr. Allen: OK.

Mr. Chairman: Does everyone else have it? We are now dealing with where it says subsections 5, 5a, 6, 6a and 6b.

Mr. Campbell: I move we withdraw the previous—

Mr. Chairman: Can you give me a moment? Does everyone have this material? Mrs. O'Neill, perhaps I can suggest, as I think Mr. Campbell was about to do, that we withdraw what you have said so far—

Mrs. O'Neill: Even subsection 5?

Mr. Chairman: I would be grateful if you would read this amendment again in its entirety.

Mr. McGuinty: Just say, "I take it back."

Mrs. O'Neill: I will do that. Mr. McGuinty has suggested I just take everything back. We will start fresh.

Mr. Chairman: Mrs. O'Neill moves that subsections 40(5) and (6) of the bill be struck out and the following substituted therefor:

"(5) Sections 127 and 136k of the Education Act apply with necessary modifications to the Roman Catholic sector.

"(5a) Sections 128 and 130 to 133 of the Education Act apply with necessary modifications to the public sector and the Roman Catholic sector for elementary and secondary school purposes as if they were both separate school boards.

"(6) For the purposes of section 130 of the Education Act the sectors shall use the factors determined by the minister in 1989.

"(6a) A determination of the minister under subsection (6) is not a regulation within the meaning of the Regulations Act."

Again, to be absolutely clear, everyone knows what the amendment is. Is there discussion of Mrs. O'Neill's amendment?

Motion agreed to.

Mr. Chairman: I now call subsections 40(7), 40(8) and 40(9). Discussion? Those in favour? Against? Carried.

Section 40, as amended, agreed to.

L'article 40, modifié, est adopté.

Section/article 41:

Mr. Chairman: I call subsection 41(1). Discussion? In favour? Against? Carried.

I have notice of amendment of subsection 41(2).

Mrs. O'Neill moves that section 41(2) of the bill be amended by inserting after "the" in the third line "unpaid."

Motion agreed to.

Section 41, as amended, agreed to.

L'article 41, modifié, est adopté.

Section/article 42:

Mr. Chairman: I have notice of an amendment for section 42.

Mrs. O'Neill moves that section 42 of the bill be struck out.

Mr. Chairman: Discussion? Those in favour? Against?

Motion agreed to.

1730

Sections 43 and 44 agreed to.

Les articles 43 et 44 sont adoptés.

Section/article 45:

Mr. Chairman: I call subsection 45(1). Discussion? Those in favour? Against? Carried.

I have notice of an amendment of subsection 45(2).

Mrs. O'Neill moves that subsection 45(2) of the bill be struck out and the following substituted therefor:

"(2) Each sector shall determine the rates to be levied for its purposes."

Motion agreed to.

Mr. Chairman: I call subsection 45(3). Discussion? Those in favour? Against? Carried.

Section 45, as amended, agreed to.

L'article 45, modifié, est adopté.

Sections 46 to 52, inclusive, agreed to.

Les articles 46 à 52, inclusivement, sont adoptés.

Section/article 53:

Mr. Chairman: I call subsections 53(1) and (2). Those in favour? Against? Carried.

I have notice of an additional amendment to subsection 53(3).

Mrs. O'Neill moves that subsection 53(3) of the bill be amended by striking out "with one another to share the services of a supervisory officer" in the third and fourth lines and inserting in lieu thereof "whereby one of them purchases the service of a supervisory officer of another of them."

Motion agreed to.

Mr. Chairman: I call subsections 53(4) and 53(5). Those in favour? Against? Carried.

Section 53, as amended, agreed to.

L'article 53, modifié, est adopté.

Sections 54 to 59, inclusive, agreed to.

Les articles 54 à 59, inclusivement, sont adoptés.

Section/article 60:

Mr. Chairman: I call subsections 60(1) through (9) in order that we can consider new subsections under amendments. Discussion? Those in favour? Against? Carried.

I have notice of amendments.

Mrs. O'Neill: I have an amendment.

Mr. Chairman: Mrs. O'Neill moves that section 60 of the bill be amended by adding thereto the following subsections:

"(10) A party to a dispute under this section between the French-language board of one of its sectors and one or more English-language boards may cause a copy of the arbitration board's decision to be filed in the office of the registrar of the Supreme Court, exclusive of the reasons therefor, and the decision shall be entered in the same way as a judgement of the Supreme Court and is enforceable as such.

"(11) A decision of the arbitration board in respect to a dispute between the public sector and the Roman Catholic sector shall be deemed to be a decision of the French-language board.

"(12) A party to a dispute under this section between the public sector and the Roman Catholic sector may cause a copy of the arbitration board's decision to be filed in the office of the registrar of the Supreme Court, exclusive of the reasons therefor, and the decision shall be entered in the same way as a judgement of the Supreme Court and is enforceable as such against any member of either sector."

Motion agreed to.

Section 60, as amended, agreed to.

L'article 60, modifié, est adopté.

Section/article 61:

Mr. Chairman: I call subsections 61(1), (2) and (3). Those in favour? Against? Carried.

Mr. Tatham moves that subsection 61(4) of the bill be struck out and the following substituted therefor:

"(4) All of the personal property of an English-language board that was used at any time during the period from the 31st day of January, 1988, to the 31st day of December, 1988, on a school site that is to be transferred under this section shall be transferred to the French-language board on the 1st day of January, 1989."

Motion agreed to.

Mr. Chairman: I call subsections 61(5) and 61(6). Those in favour? Against? Carried.

Mr. Tatham moves that subsection 61(7) of the bill be struck out and the following substituted therefor:

"(7) Subsections (1) to (4) are subject to any agreement concerning the transfer of school sites and the personal property on them,

"(a) made between the French-language board and an English-language board; or,

"(b) made before the 1st day of December, 1988, between two English-language boards and concurred in by a majority of the members of the French-language education council of each of them and a majority of the other members of each of them."

Motion agreed to.

Mr. Chairman: Mr. Tatham moves that subsection 61(8) of the bill be amended by striking out "Unless both sectors provide otherwise by majority resolutions" in the first and second lines.

Motion agreed to.

Mr. Chairman: Mr. Tatham moves that subsection 61(9) of the bill be struck out and the following substituted therefor:

"(9) The personal property transferred to the French-language board under this section shall be allocated to the sector to which the school site on which it was used is allocated.

"(10) If there is a major shift in enrolment of pupils from one sector to the other, the sectors shall, by resolutions of both of them, reallocate the school sites transferred to the French-language board under this section to meet the needs of both sectors consequent upon that shift in enrolment.

"(11) If only one sector resolves that a school site be reallocated under subsection (10), either sector may require that the matter be resolved under part XI."

Mr. McGuinty: I have a second page here which states that 36 is continued, and it indicates subsections 61(10) and (11) again. Is that an error in collating?

Mr. Chairman: You have a second page dealing with this amendment?

Mrs. O'Neill: I think it is just an explanation.

Mr. McGuinty: OK. All right. Excuse me.

Motion agreed to.

Section 61, as amended, agreed to.

L'article 61, modifié, est adopté.

Section/article 62:

Mr. Chairman: I call subsections 62(1) and 62(2). Those in favour? Against? Carried.

Mr. Campbell moves that subsection 62(3) of the bill be struck out.

Motion agreed to.

Mr. Chairman: I call subsections 62(4), (5) and (6). Those in favour? Against? Carried.

Mr. Campbell moves that subsection 62(7) of the bill be amended by adding at the end "and that part shall apply with necessary modifications as if the dispute between the members of the French-language education council and the other members of the English-language board were a dispute between the French-language board and an English-language board."

Motion agreed to.

1740

Mr. Chairman: I call subsection 62(8). Those in favour? Those against? Carried.

Mr. Campbell moves that subsections 62(9) and (10) of the bill be struck out and the following substituted therefor:

"(9) The assets and reserves transferred to the French-language board under this section shall be allocated to,

"(a) the public sector if they are transferred by the Ottawa Board of Education or the Carleton Board of Education;

"(b) the Roman Catholic sector if they are transferred by the Ottawa Roman Catholic Separate School Board or the Carleton Roman Catholic Separate School Board.

"(10) If on or before the 31st day of December, 1988, a sector determines by resolution that the assets and reserves of an English-language board chosen for transfer to that sector do not represent an equitable contribution, it shall refer the choice of assets and reserves to the commission as a dispute under part XI.

"(11) The sector and the relevant English-language board shall be deemed to be the parties to a dispute under subsection (10).

"(12) The full board shall determine what assets it needs in order to exercise its jurisdiction under this act.

"(13) Each sector shall allocate a portion of the assets allocated to it under this section to the full board to meet its needs.

"(14) The value of the assets allocated by a sector shall be the same proportion of the value allocated by both sectors that the average daily enrolment of pupils in the schools of the relevant sector bears to the average daily enrolment of pupils in all of the schools of the French-language board.

"(15) Each sector shall by agreement with the full board determine which

of the assets allocated to it under subsection (9) are to be reallocated to the full board and shall reallocate those assets."

Motion agreed to.

Section 62, as amended, agreed to.

L'article 62, modifié, est adopté.

Section/article 63:

Mr. Chairman: I call subsection 63(1). Those in favour? Against?
Carried.

Mr. Campbell moves that subsections 63(2) and (3) of the bill be struck out.

Motion agreed to.

Section 63, as amended, agreed to.

L'article 63, modifié, est adopté.

Sections 64 and 65 agreed to.

L'articles 64 et 65 sont adoptés.

Section/article 66:

Mr. Chairman: Mr. Campbell moves that subsections 66(1) and (2) of the bill be struck out and the following substituted therefor:

"66 (1) Each English-language school board shall determine the number of its employees other than those designated under section 65 whose services will not be required by it consequent upon the formation of the French-language board.

"(1a) The French-language board shall determine the number of positions it will need to fill consequent upon its formation.

"(1b) The English-language boards and the French-language board shall select the employees of the English-language boards who are to be transferred to the French-language board to fill the positions referred to in subsection (1a).

"(2) The selections under subsection (1b) shall be made by agreements between the public sector and the Ottawa Board of Education, the public sector and the Carleton Board of Education, the Roman Catholic sector and the Ottawa Roman Catholic Separate School Board and the Roman Catholic sector and the Carleton Roman Catholic Separate School Board.

"(2a) Either sector, by written notice to the two English-language boards with which it is to make agreements under subsection (2), may choose to negotiate one agreement with both of them rather than separate agreements with each of them.

"(2b) The agreements shall provide for,

"(a) the exchange of enrolment and other data among the boards so as to enable them to make the appropriate sections;

"(b) methods for encouraging voluntary transfers of employees to positions with the French-language board; and

"(c) a right of first refusal, on the basis of seniority, for selected persons with respect to positions that become vacant in their English-language board."

Motion agreed to.

Mr. Chairman: We are called to a vote in the House.

La prochaine réunion du Comité permanent concernant le projet de loi 109 aura lieu dans cette salle demain après la période des affaires courantes, c'est à dire vers 15h30.

Ladies and gentlemen, we adjourn until tomorrow at approximately 3:30 in this room.

The committee adjourned at 5:47 p.m.

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S-27

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT

TUESDAY, JUNE 21, 1988

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitution:

Sterling, Norman W. (Carleton PC) for Mr. Cousens

Clerk: Carrozza, Franco

Staff:

Baldwin, Elizabeth, Legislative Counsel

Witnesses:

From the Ministry of Education:

Ward, Hon. Christopher C., Minister of Education (Wentworth North L)

Sass, Pierre Paul, Education Officer (Bilingual), Legislation Branch

Lamontagne, Maurice, Education Officer, Franco-Ontarian Education

Tomlinson, J. R., Senior Legal Counsel, Legislation Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, June 21, 1988

The committee met at 3:33 p.m. in room 151.

OTTAWA-CARLETON FRENCH-LANGUAGE SCHOOL BOARD ACT
(continued)

LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANCAISE D'OTTAWA-CARLETON
(suite)

Consideration of Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Etude du projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

M. le Président: Mesdames et messieurs, bienvenue à une réunion du Comité permanent des affaires sociales concernant le projet de loi 109, Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton. Nous avons avec nous le ministre responsable, l'honorable Chris Ward. Aujourd'hui, nous continuerons l'étude du projet de loi 109 article par article.

Ladies and gentlemen, this is the standing committee on social development and we are continuing our clause-by-clause consideration of Bill 109, An Act to establish a French-Language School Board for the Regional Municipality of Ottawa-Carleton.

Before we begin, if I might, I have one organizational matter. I am not sure if we will finish today. If we do not, we will continue on Monday, as the House is not sitting on Thursday. I would suggest that whatever the outcome of today's affairs, we plan to meet on Tuesday, after routine proceedings in the House, at approximately 3:30, to organize ourselves for the summer. Between now and then, I would be grateful if members of all parties would consult with their House leaders about the plans the House has for this committee this summer.

Are there any other organizational things?

Mr. McGuinty: Is that the usual way of going about it? We all check individually?

Mr. Chairman: No, it is not, but at the moment, because there are a number of bills before the House, it is not exactly clear what we will be doing. We have been assigned the first two weeks in August. There is a possibility that we will be doing Bill 124, there is a possibility that we will be doing a health bill and I simply think that the sooner we hear, the sooner we ourselves can make arrangements.

Mr. McGuinty: So you will do that on our behalf?

Mr. Chairman: I will do it, but I would hope that if you get a chance to mention it to our House leader, you will do the same.

Section/article 66:

Mr. Chairman: It is my understanding, ladies and gentlemen, that we left off yesterday at subsection 66(3). That is page 86 of the printed bill. I have notice of an amendment to subsection 66(3).

Mr. Campbell moves that subsection 66(3) of the bill be amended by striking out "agreement" in the first line and inserting in lieu thereof "agreements" and by striking out "(2)" in the second line and inserting in lieu thereof "(2b)."

Any discussion of Sterling Campbell's amendment?

Motion agreed to.

Mr. Chairman: I now call subsection 66(4). In favour? Against? Carried.

I have notice of an amendment to subsection 66(5). We are still on page 86. Would someone care to move that amendment?

Mr. McClelland moves subsection 66(5) of the bill be amended by striking out "31st day of March" in the second line and inserting in lieu thereof "last day of February."

Discussion of Carman McClelland's amendment?

Motion agreed to.

Mr. Chairman: I would now call subsections 66(6) through (14). Any discussion? Those in favour? Against? Carried.

I have notice of an amendment for subsection 66(15) on page 88.

Mr. Campbell moves that subsection 66(15) of the bill be amended by striking out "clause (1)(b)" in the fourth line and inserting in lieu thereof "subsection (1a)" and by striking out "clause (1)(a)" in the sixth line and inserting in lieu thereof "subsection (1)."

Discussion of Sterling Campbell's amendment?

Motion agreed to.

Mr. Chairman: I have notice of an amendment of subsection 66(16).

Mr. Campbell moves that subsection 66(16) of the bill be amended by striking out "and (15)" in the first line.

Discussion?

Motion agreed to.

Section 66, as amended, agreed to.

L'article 66, modifié, est adopté.

Section/article 67:

Mr. Chairman: I have notice of an amendment of subsection 67(1).

Mr. McGuinty moves that subsection 67(1) of the bill be amended by striking out "agreement" in the first line and inserting in lieu thereof "agreements."

Any discussion of Dalton McGuinty's amendment?

Motion agreed to.

Mr. Chairman: I call subsection 67(2). Those in favour? Against? Carried.

I have notice of an amendment of subsection 67(3).

Mr. McGuinty moves that subsection 67(3) of the bill be amended by striking out "The French-language board or one of the English-language boards" in the first and second lines and inserting in lieu thereof "The relevant sector or the relevant English-language board."

Discussion of Dalton McGuinty's amendment?

Motion agreed to.

Mr. Chairman: I have notice of an amendment of subsection 67(4).

Mr. McGuinty moves that subsection 67(4) of the bill be amended by striking out "agreement" in the first line and inserting in lieu thereof "agreements."

Discussion of Dalton McGuinty's amendment?

Motion agreed to.

1540

Mr. Chairman: I call subsections 67(5) and (6). Discussion? Those in Favour? Against? Carried.

I have notice of new subsections 7 and 8.

Mr. McGuinty moves that section 67 of the bill be amended by adding thereto the following subsection:

"(7) Subject to sections 69 and 77, the teaching contract, employment contract or employment relationship, as the case may be, of an employee for whom the French-language board is responsible under this section is transferred to and assumed by the French-language board effective the 1st day of September next following the date upon which the agreement providing for that responsibility is reached or such earlier date as the parties to the agreement may agree upon."

We are considering the new subsection 7 only. Any discussion of Mr. McGuinty's amendment? Those in favour? Against?

Motion agreed to.

Mr. Chairman: I have notice of an amendment for a new subsection 8.

Mr. McGuinty moves that section 67 of the bill be amended by adding thereto the following subsection:

"(8) In 1989, 1990 and 1991, an English-language board shall not hire a person other than an employee identified under subsection (1) to fill a position unless there is no such employee who is qualified to fill the position and whose employment continues to be maintained by any of the English-language boards or the French-language board."

Motion agreed to.

Section 67, as amended, agreed to.

L'article 67, modifié, est adopté.

Section 68 agreed to.

L'article 68 est adopté.

Section/article 69:

Mr. Chairman: I have notice of an amendment at the beginning of section 69.

Mr. Tatham moves that subsection 69(1) of the bill be amended by adding after "transfer" in the fourth line, "until the French-language board reaches a new collective agreement or determines the board policy that applies to them."

Discussion of Mr. Tatham's amendment? All those in favour? Against?

Motion agreed to.

Mr. Chairman: I call subsections 69(2), 69(3) and 69(4). Those in favour? Against? Carried.

Section 69, as amended, agreed to.

L'article 69, modifié, est adopté.

Section/article 70:

Mr. Chairman: I have notice of an amendment to section 70(1).

Mr. Tatham moves that subsection 70(1) of the bill be struck out and the following substituted therefor:

"(1) In this section, "seniority," in respect of a position in a school or premises of the French-language board, means seniority determined on the basis of the seniority list applying to employees transferred from the same English-language board that transferred the school or premises."

Discussion of Mr. Tatham's amendment? Those in favour? Against?

Motion agreed to.

Mr. Chairman: I call subsection 70(2). Those in favour? Against? Carried.

I have notice of an amendment to subsection 70(3).

Mr. Tatham moves that subsection 70(3) of the bill be struck out and the following substituted therefor:

"(3) Before a sector or the full board fills a position, it shall notify all transferred employees and employees described in section 67 of the position by causing a notice to be posted in all of the schools of both sectors and of the English-language boards and at the head office of the French-language board and the English-language boards."

Discussion of Mr. Tatham's amendment? Those in favour? Against?

Motion agreed to.

Mr. Allen: Are things of this nature supposed to be identified by the member's name? Is that the traditional way of doing it, or should they be identified by party or by government? This is just for my own information, because my memory is not clear on this process. You have sort of indicated who the individual member was making the amendment. Is that the standard practice?

Clerk of the Committee: The reason is that the minister cannot move the amendments, since he is not a member of the committee. So any member on the governing party can move the amendments.

Mr. Allen: And it is identified by the individual member, and not just as a government amendment.

Clerk of the Committee: No.

Mr. Allen: OK, that is fine.

Mr. Chairman: I am sorry. I am afraid I missed the point.

Clerk of the Committee: Mr. Allen can move the amendment too, if you wish, if it is OK with the minister.

Mr. Sterling: I think, Mr. Chairman, that some member of the committee has to move it and therefore it is quite proper for you to identify—

Mr. Chairman: OK. Thank you.

Mr. Allen: I just never heard a chairman—

Mr. Jackson: They are keeping score over here. Sterling is up by two amendments actually, just in case anybody is interested.

Interjections.

Mr. Chairman: I call subsections 70(4) through (8). Discussion? Those in favour? Against? Carried.

Section 70, as amended, agreed to.

L'article 70, modifié, est adopté.

Sections 71 to 74, inclusive, agreed to.

Les articles 71 à 74, inclusivement, sont adoptés.

Section/article 75:

Mr. Chairman: I have notice of an Ontario Separate School Trustees' Association amendment for section 75.

Mr. Jackson: Where are we?

Mr. Chairman: Page 100, section 75.

Mr. Jackson: Could we get a response from the minister with respect to the point raised by OSSTA? I think it has a cross-reference to Bill 30, does it not?

Hon. Mr. Ward: Yes, it does. The intent of the OSSTA motion is to delete section 136-1a of the Education Act. From your involvement in this committee during the course of those Bill 30 hearings, you will know that section 136-1a was introduced, I believe, by the opposition parties during clause-by-clause consideration in the House. The position of OSSTA is that section 136-1a is unconstitutional.

Mr. Jackson: So the minister supports the position we took?

Hon. Mr. Ward: The minister supports that Bill 109 should reflect the applicable provisions in the Education Act—

Mr. Jackson: You continue to support the position of the opposition parties. I want to thank the minister for that explanation.

Hon. Mr. Ward: —which include section 136-1a and, therefore, we do not believe that it should be deleted.

Mr. Jackson: You have received legal opinion to this effect?

Hon. Mr. Ward: Yes.

Mr. Jackson: Thank you.

Mr. Chairman: As I have notice of an amendment which involves a new subsection, subsection 75(2), I would like to call that amendment first and then I would call the entire section. Could we move this amendment?

Mrs. O'Neill moves that section 75 of the bill be amended by adding thereto the following subsection:

"(2) Despite subsection (1), the regulations under section 136-1 of the Education Act do not apply to the French-language board and if the sectors fail to reach an agreement under that section the matter shall be referred to the commission as a dispute under part XI."

Motion agreed to.

Section 75, as amended, agreed to.

L'article 75, modifié, est adopté.

Section/article 76:

Mr. Chairman: Mrs. LeBourdais moves that clause 76(1)(b) of the said act be amended by striking out "school" in the second line.

Mr. Sterling: Would Mrs. LeBourdais like to explain that amendment?

Mrs. LeBourdais: I would be glad to.

Mr. Sterling: Oh, I think I understand it.

Mr. Chairman: You do understand? Very good.

Mrs. LeBourdais: It is strictly a housekeeping amendment. I am sure you would catch on very quickly.

Mr. McGuinty: I would question the propriety of referring what is called a "housekeeping" amendment to one of our colleagues who is a lady. It has sexist overtones.

Mr. Chairman: Thank you, Mr. McGuinty. You are probably working from different notes than the rest of us.

Mrs. LeBourdais: Perhaps "homemaking" amendment would be more appropriate than "housekeeping."

Motion agreed to.

Section 76, as amended, agreed to.

L'article 76, modifié, est adopté.

Section/article 77:

Mr. Chairman: I call subsections 77(1) and (2). Discussion? Those in favour? Against? Carried.

Mrs. O'Neill moves that section 77 of the bill be amended by adding thereto the following subsections:

"(3) Sections 71, 72 and 73 prevail over this section in respect of employees described in this section.

"(4) Sections 69, 70 and 74 do not apply to employees described in this section after an application is made to the labour relations board under this section."

Motion agreed to.

Section 77, as amended, agreed to.

L'article 77, modifié, est adopté.

Sections 78 to 81, inclusive, agreed to.

Les articles 78 à 81, inclusivement, sont adoptés.

Section/article 82:

Mr. Sterling: May I ask the ministry officials who this includes and

who it does not include? I am talking about clause 82(1)(i). I have had different interpretations from the ministry on this particular clause and I think I would like to have it clear as to who is entitled to be registered as a French-speaking person.

If a child has received his primary education totally in French, but French is his second language, are the parents then entitled to register as French-speaking persons?

Hon. Mr. Ward: No, they are not.

Mr. Sterling: They are not? I was talking about the French early immersion program. Is the child, when he reaches adulthood, entitled to be registered as a French-speaking person?

Hon. Mr. Ward: No.

Mr. Sterling: So that a person who is totally bilingual, can speak French fluently and wants his children to be brought up in the francophone school system cannot demand that?

Hon. Mr. Ward: Section 82 is a reference to section 23 of the Charter of Rights and Freedoms. Section 23 charter rights apply to those Canadian citizens whose first language is French. In the situations you describe, those individuals do not have section 23 rights.

Mr. Sterling: What if someone who is presumably bilingual can say his primary language is either French or English?

Mr. Lamontagne: The qualification there is that once that person has a child, if he wants that child to be educated in a francophone environment, he will ensure that child is accepted in a French-language school; and once that child has been admitted to a French-language school, then all the rights follow for the parent of that child to be an elector as well.

Mrs. O'Neill: I just want to say that this bill is for francophones, not necessarily for people who speak the French language. You can learn to speak the French language in many ways, and immersion is one of those ways, but I think Maurice is trying to say that if these people who are now in immersion decide that is the language they want their own children educated in, and if they had taught their children to speak French from the beginning, they could likely go to the admissions committee of any school in their neighbourhood and the children would likely be admitted.

But I think we have to underline that this is a bill which protects minority rights and gives a minority a right to have its own school system in Ottawa-Carleton. Immersion is something totally apart from that and will continue to be carried on by the English-language school boards that remain.

Hon. Mr. Ward: If you would like, Mr. Chairman, I will read the committee subsections 23(1) and 23(2) of the charter.

Mr. Sterling: I know what subsections 23(1) and 23(2) of the charter say, but you may read it. I can give a different interpretation than you are giving to me. That is the problem.

Hon. Mr. Ward: I quote:

"23(1) Citizens of Canada

"(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

"(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received their instruction is the language of the English or French linguistic minority population of the province,

"have the right to have their children receive primary and secondary school instruction in that language in that province."

If their language of instruction in primary school has been French, they have that right.

Mr. Sterling: OK. I guess that is what I was saying.

Hon. Mr. Ward: I guess the difficulty is where you get into the issue of whether they have had their education in a French-as-a-first-language school or whether their education involves French as a second language.

Mr. Sterling: But does the Constitution not have the "or" part of it—and I had a previous interpretation by an official from the ministry—that as long as a child received his primary education in French, then he fell within the ambit of that part? If they fall within the ambit of that, then do they not fall within the ambit of subsection 82(1)?

Hon. Mr. Ward: I take it they would.

Mr. Lamontagne: The difference with an immersion school is that it is a school for English-speaking pupils and it is defined as such.

Mr. Sterling: That is not what you are talking about. The Constitution is clear in terms of what it says. It is if you receive your primary education in French. OK? If my children go into an immersion course, which they did, and they received their first three years totally in a French environment, are they not then entitled to be considered under subsection 82(1)?

1600

Hon. Mr. Ward: This gets very confusing. There are something like 56 French-language schools operating across the province; 24 of them operate as French-as-a-first-language schools and the balance are operated as French-immersion schools. There is a difference. I take it the issue is whether or not those children are students of the French-language school or whether they are English students in an immersion program. Is that not correct?

Mr. Lamontagne: That is correct. They are English-speaking students in a French-immersion program for the purpose of learning French, as opposed to for the purpose of being educated in French.

Mr. Sterling: I think your argument would be very, very difficult in a court.

Hon. Mr. Ward: I guess it is not up to me to interpret the charter.

Mr. Sterling: No, no, I realize that but what I am saying is, taking what Yvonne says and what the purpose and intent of the statute are, I am not certain that this definition—

Hon. Mr. Ward: For the purposes of this bill, and I want to make it clear, section 82 lays out that a French-speaking person is whatever subsections 23(1) and 23(2) mean, knowing full well that over the course of time, through interpretations and judgements, that will become more clearly defined.

I cannot, and I am not sure any of us can, satisfy your concerns for you until there are some precedents on some of those issues. I think what we are getting into is a debate on the charter and what it means. Frankly, I am not sure we can resolve that.

Mr. Sterling: I guess my response is that if in fact the intent is to cut out the right of those children to the system, which I believe is the intent of the government, then an immersion child should not have the right to go to a francophone school system.

Hon. Mr. Ward: The intent of the government in Bill 109, the intent of the government in terms of Bill 125 and the governance models, is to recognize and to ensure that the charter rights of Canadian citizens are met.

There has been an ongoing debate, and I am sure you are well aware of it, within the francophone multicultural community as to who is included and who is not. There are many people in this country whose mother tongue is not French, whose second language is French and whose third or fourth language is English. For functional purposes, they are far more fluent in French. They do not have those section 23 rights.

It is an important issue, one that we are seeking input on throughout this province and an issue that we will have to consider as a matter of provincial policy over what rights and recognition those individuals are granted. But we cannot make assumptions for the charter.

Mr. Sterling: Therefore, you are saying your intent is not clear. You are not defining—

Hon. Mr. Ward: Our intent is clear, as of today, to recognize those Canadians with section 23 rights.

Mr. Sterling: You are sloughing it off to the interpretation of the charter. That is what you are saying.

Hon. Mr. Ward: We are also having some rather broad-based input as to the extent to which we should go beyond that. OK? It is open for consideration, but if the question is, "Do you want to expand those rights to this legislation?" the answer is "Today, no."

It is an important issue, one that I think we require input on and we are actively seeking that input. Once we get it, we will make our determination. I cannot be any more candid than that.

Mr. Sterling: I think what you are telling me is you have not decided and if a case comes up in court, the court is going to decide who has the rights to these school boards and who does not, through the interpretation of that section.

Hon. Mr. Ward: What I am saying to you is that the obligations that we are meeting under this piece of legislation and others are the section 23 charter rights of Canadians. You are asking a policy question.

Mr. Sterling: I am not sure you are going far enough. That is my problem.

Hon. Mr. Ward: There is a variance of opinion here. It is important debate on it should take place. That debate has begun.

Mr. Campbell: I think most of the questions have been answered. On the difference between a French-language and a French-immersion school system, do not forget that at some point in the French-immersion system, depending on the system you are using, English is taught. It is taught as part of the program.

Mr. Sterling: You are getting off the real thrust of the question. The ministry is saying it is immersion versus francophone. I am saying that is not what the legislation says; that is the Liberal interpretation of what you would like the public to believe.

Hon. Mr. Ward: That is section 23.

Mr. Sterling: It is a section 23 definition.

Mr. Campbell: What I was saying was that the minister had answered the question under section 23 rights. I think that is basically where it sits and where it has to sit. I was just pointing out that there was some language, because when you meet the definition of "primary language of instruction," in a French immersion system, there is English taught and that equalizes throughout the school system. In our school system, it does. At the end of grade 13, you have an equal situation.

Mrs. O'Neill: I think Mr. Sterling is well aware that this bill has been in the embryonic stages since 1972. In 1972—

Mr. Sterling: We got 60 amendments last week.

Mrs. O'Neill: OK, just a second; may I continue?

Mr. Sterling: Sorry.

Mrs. O'Neill: In 1972, we did not have the level of immigration that we have now, which is a problem that we deal with. Immigration is not the only problem we deal with. As you know, we have had the enumeration already, and the enumeration form did not include anybody beyond section 23. I think the two bills are complementary to each other.

The other situation we have is that we have not had enough consultation with francophones in this province who are franco-Ontarians, to see just how and where they want to extend. There is a real fear among franco-Ontarians, first, regarding the immersion and the feeling that parents have—the parents for French, in particular—franco-Ontarian rights, and that may not be the case.

I think the minister is suggesting that this is not a closed door, but at this moment this is the legislation we have to go on. It is the only thing that has been clearly defined and accepted by the franco-Ontarian community,

and certainly that one in Ottawa-Carleton. We will be open, as the minister has said, to anything that can be accepted by consensus with the people this bill is about to serve.

Mr. Chairman: I am sure that you see immigration only as a problem in that particular sense. For me, immigration has been a great opportunity.

Mrs. O'Neill: You are right. I am sorry if I have offended you in any way.

Hon. Mr. Ward: I have just one further point. Everything we have done in this legislation on matters such as this has been consistent with the provisions of the Education Act. I think the question that is being brought is an important one, but I am not at all convinced that it would be prudent to very arbitrarily take one specific piece of legislation relative to education and structure it in such a way that it is inconsistent with everything else we do in terms of the provisions of the Education Act. I am not saying that it is not an important point, but it goes beyond the parameters of Bill 109, and it will be addressed in a proper manner.

Mr. Allen: I think Mr. Sterling raises a question that does puzzle many people, and I am concerned that some of the answers he has been getting have not really met him on his own ground.

The relevant passage from the Charter of Rights and Freedoms is very appropriate. I think it is important for us to realize that section of the charter deals with official-language minorities, groups who function out of their maternal languages. The schools in question it refers to are those of the maternal tongue. The act governing the governance of French-language schools, Bill 75, was struck, as is this bill, in order to provide governance to a maternal-language community whose children are the ones who have the right to go to that school.

The question then becomes the school system. How do you then become a maternal-tongued, French-speaking person? That is the question. The fact that one goes to an immersion school normally simply equips one to be an English-speaking person who has a capacity to speak French. There is no guarantee that one's child will therefore be raised as a maternal-tongue child through his infancy and will reach the school system with the same equipment that his peers in that group would have. The consequences, I think, are quite logical and obvious.

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The problem is raised with regard to immigration, those who come from outside the country. The rights in Canada are for Canadian citizens; they are not for other people. Other people may make their application if they have competent French-speaking children or if they are competent French-speaking persons themselves and may get into this school system, just as one may do as an English-speaking Canadian and, as I happen to be a French elector, simply by virtue of the fact that my kids did go to francophone schools and now are functioning francophones in those terms.

That is, none the less, a very different situation than the immersion route, and I think one has to preserve the sense of that difference. Otherwise, we are going to remain in a lot of confusion about what we are doing in terms of French boards and French schools.

Mr. Sterling: The one problem I have to deal with on a practical level is to advise constituents who will phone me from time to time asking, "Does my child have the right to the system?" especially if they live way back in Timbuctoo and it requires a bus to go a long distance to the nearest facility. So the position of the ministry is that—well, do you want to tell me? Who has the right?

Hon. Mr. Ward: The position of the ministry is that you can tell your constituents the rights they have are the rights of Canadian citizens under the charter. If you want to do the interpretation, Norm, you are so political that I am sure you will find a way.

Mr. Sterling: I have to be a little bit more precise than that, Mr. Ward. Perhaps your official would give me a definition which we can use in the Ottawa-Carleton area as to who has the right.

Mr. Lamontagne: Again, I think Mr. Allen pointed out fairly closely that the charter's intent is to protect minority language rights of the minority-language groups, and a student of immersion is the child of a person who, under that definition, does not have those minority language rights.

In the case you have indicated, it is then up to the groups which do have those rights to admit children to their school system if they judge them to be able to compete with the children who are already in the school as members of that minority-language group who do have those minority language rights. Once that admission has been made, all other rights follow, and the parent of that child becomes a French-speaking person by definition.

Mrs. O'Neill: In the real world, often if one child in a family is admitted in Ottawa-Carleton, all members of the family are admitted.

Mr. Lamontagne: That is correct.

Mr. Sterling: But in terms of the application to the board, let's say there is a negative answer. What does that parent then do? Can he appeal to anybody, or is the director of education the be-all and the end-all in terms of the say?

Mr. Lamontagne: In the case of a parent who wants a child admitted to a French school but is refused because of the charter, and because the admissions committee judges that child not to be competitive linguistically, that parent can only ask the board to provide an immersion program for him.

Mr. Sterling: So it is the admissions committee, and it judges on the basis of the capability of the child coming in?

Mr. Lamontagne: That is correct.

Mr. Sterling: If the child is fluently French enough, if he has an aptitude, then that child is into the system?

Mr. Lamontagne: That child is into the system, and by virtue of that, that child's brothers and sisters will also have the same rights.

Mr. Chairman: That is a working criterion, is it not?

Hon. Mr. Ward: Yes. The legislation compels, but I think Norm understands.

Mr. Chairman: Further discussion of section 82?

Section 82 agreed to.

L'article 82 est adopté.

Sections 83 to 86, inclusive, agreed to.

Les articles 83 à 86, inclusivement, sont adoptés.

Section/article 1:

Mr. Chairman: We now go back to section 1. Section 1 is definitions. I have notice of an amendment in subsection 1(1).

Mrs. O'Neill moves that the definition of "school system" in subsection 1(1) of the bill be amended by striking out "school" in the second line.

Motion agreed to.

Mr. Chairman: I call section 1(1), as amended. Those in favour? Against? Carried.

I call subsections 1(2), (3) and (4). Those in favour? Against? Carried.

I have notice of amendments involving new subsections.

Mr. McClelland moves that section 1 of the bill be amended by adding thereto the following subsections, which read as follows:

"(5) The provisions of this act shall not be construed in a way that prejudicially affects a right or privilege with respect to denominational schools guaranteed by the Constitution Act, 1867.

"(6) If it is finally determined by a court that a provision of this act prejudicially affects a right or privilege with respect to denominational schools guaranteed by the Constitution Act, 1867, that provision is repealed, it being the intention of the Legislature that the remaining provisions of this act are separate from and independent of the said provision."

Any discussion of Carman McClelland's amendment and the new subsections?

Mr. Sterling: We asked some time ago that the Attorney General (Mr. Scott) appear in front of us to make certain that this particular act is consistent with the rights under section 93 of the Constitution. Can I ask—

Mr. Chairman: Norm, we dealt with that yesterday. Members were supplied with a letter from the Attorney General in which he explained that it was not the practice of attorneys general to appear before standing committees and make such judgements, and we discussed it at that time.

Mr. Jackson: We received the letter but we did not discuss it. What the Attorney General indicated to both you and me, Mr. Chairman, when we approached him in the House was that it was properly the responsibility of the Minister of Education (Mr. Ward) to explain the sources for his legal opinion and the basis on which he has come to that conclusion. Given that the minister is here, perhaps we can hear his—

Hon. Mr. Ward: I would be happy to provide that information. The legal advice which has been provided to the ministry on the formulation of the legislation is that it is indeed constitutional and conforms to the Charter of Rights and Freedoms.

Mr. Jackson: Is that an opinion which you can make public?

Hon. Mr. Ward: I have just made it public.

Mr. Jackson: I mean written. These were ministry lawyers who advised you in such a fashion?

Hon. Mr. Ward: In addition to ministry lawyers, there were also written submissions by lawyers within the Attorney General's department. No, we do not make legal opinions available.

Mr. Sterling: First, all your lawyers are the Attorney General's lawyers, is the way I understand it. The ministry does not have lawyers as such, so it is the Attorney General's opinion.

Hon. Mr. Ward: I would not say that we do not have lawyers.

Mr. Sterling: Well, your lawyers are paid by the AG.

Hon. Mr. Ward: OK. I thought you were making some kind of pejorative statement. I am sorry.

Mr. Sterling: No, no. I would never do that.

Interjections.

Mr. Sterling: Under any circumstances.

Hon. Mr. Ward: You notice I did not agree.

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Mr. Sterling: I know who your boss is.

At any rate, if that is the case, then what is the need for these sections of the act? I agree with the Attorney General that he should not come in front of a committee and justify, in a constitutional sense, his legislation every time he presents a bill to the Legislature.

If he believes that, then that is fine and dandy and we march on. But if there is a question about it, and I think there is indeed a legitimate question that a member of the Legislature should be able to put forward, why do you need these kinds of sections, if in fact that is your belief?

Hon. Mr. Ward: It is our belief. You will no doubt have read the many submissions that have taken place during the course of the Roy commission. Legal opinions, again consistent with the one I have just conveyed to you, were put forward and expressed.

As a matter of fact, throughout the 20-year course of history over this particular issue, I think that matter has been debated ad infinitum. The provisions that are put in here are of a precautionary nature and have been recommended by groups during the course of the consultation process, groups,

by the way, which believe the bill to be constitutional as well.

I guess the problem I have, and it is one I have had almost as long as I have been in this place, is the notion that legislators should or are compelled to perform the function of the judiciary as well. You know and I know we cannot do that. Whatever we do is subject to the interpretation of the courts in any instance.

We are proceeding on the basis that it is our belief that the legislation is constitutional. We have advice to that effect. The only person who can give a definitive answer on each and every piece of legislation that ever goes through this place is a court itself. We do not refer every piece of legislation that we pass to the Supreme Court of Canada for a decision, as a precautionary item. Some of us would have us do that. I suppose some may see merit in that.

Mr. Sterling: No, I am not suggesting that.

Hon. Mr. Ward: It is a great reason not to proceed. We heard that on Bill 94, as you will recall. We heard it on the pay equity legislation. That was the position of various groups and, in some instances, of your party. I have a fundamental difference of opinion with that. I do not think that is our role.

Our role is to get the advice and draft our legislation in a manner that we believe to be consistent with the charter and the Constitution. If some people doubt that, or an organization doubts that, then they have a recourse and can pursue it.

Mr. Sterling: Can I ask you when you changed your mind on this particular matter? I put forward an amendment on Bill 30 where the government used the defence that a joint board of any kind was not constitutional. When did you change your mind and why did you change your mind?

Hon. Mr. Ward: Again, on the basis of the notion that francophones in this province have rights under the Constitution as well. Your notion was that you should have a joint board of Roman Catholic and public school ratepayers, which I believe would have been in violation. Obviously, the courts agreed, because there was a referral, and the courts ruled that indeed the rights of Roman Catholics in this province are to be upheld through the establishment of their own boards and systems.

In this case, francophones in this province have section 23 rights and, if they happen to be francophone Catholics, they have section 93 rights as well, or whatever section it is. It is on that basis, from the advice that we received, that this is constitutional. The way this board is broken into sectors and the rights and duties that those sectors have are consistent with the rights of Roman Catholics in this province. It is on that basis that this is constitutional.

Mr. Sterling: Yes, but the Supreme Court of Canada, in the reference on Bill 30, did not decide whether a merged board was constitutional or not with regard to our secondary school system. That question was not put to it in terms of the Bill 30 that it looked at. That was not an issue.

Hon. Mr. Ward: I am having trouble seeing what your point is.

Mr. Sterling: I thought your response was, or you left the impression, that the courts have been seized of that issue as to a merged board in the English sector, Roman Catholic public, and that a merged board was not possible.

Hon. Mr. Ward: I am having trouble seeing the point you are trying to make. Are you suggesting that all public and separate school boards in the province should be merged, or are you suggesting that these boards should be split?

Mr. Sterling: My amendment put forward on Bill 30 was a permissive section which would have allowed two boards, if they agreed and wanted it, to merge into one in terms of some common services. They would have been permitted to do that.

Hon. Mr. Ward: The difficulty with that is that any Roman Catholic in that situation could take the issue to court, and the opinion that was received is—this is certainly my impression—that the constitutional rights of that ratepayer would have been violated by not having available a Roman Catholic education system, to which he is entitled.

Mr. Sterling: So you are saying that a francophone Roman Catholic and a francophone who is a public school supporter are different from the English in the other situation.

Hon. Mr. Ward: No, not at all. A francophone Catholic supporter has his rights protected by the fact that there is a Catholic sector functioning, for all intents and purposes, as a board under this legislation.

Mr. Sterling: Simply put, my question is, why is it different in the francophone situation than it was in the anglophone situation under Bill 30?

Hon. Mr. Ward: Quite frankly, I can see nothing that would prevent this kind of structure. There are opportunities for public and separate boards to co-operate on all sorts of initiatives, as long as there are the protections.

Mr. Sterling: OK, so you answer my question that you did change your mind on the constitutionality.

Hon. Mr. Ward: If your suggestion is that it be compelled, that might be the position of your party; it is not of ours.

Mr. Sterling: That was never our position.

Hon. Mr. Ward: OK.

Mr. Sterling: Our position was that it be permitted in situations where it would be to the advantage of both boards to do that.

Hon. Mr. Ward: Boards have the opportunity to co-operate in any number of areas.

Mrs. O'Neill: I think we have to see that the act entitles itself the Ottawa-Carleton French-Language School Board Act. The boards in that area, separate and public, have requested from the beginning—and now it is 14 years—that there be one board, and that has been agreed to. There was never in this province, as far as I know, agreement between two parties that there

be a joint separate and public board in any other environment. At least, I have not come across it.

Mr. Sterling: That is not the issue.

Mrs. O'Neill: Well, it is another perspective, perhaps, on your issue. Many people beyond the people in Ottawa-Carleton and some of those very highly respected people, both anglophone and francophone, within Ottawa-Carleton, suggested that we put these two pieces into the act. If it allays fears, if it clarifies, if it says that the same kinds of protections are there as are in Bill 100 regarding denominational schools, then I feel it is very useful to have these here. We hope it will just clarify our intent, and I think that is what the minister has been saying.

If, however, there is a weak spot, then there is certainly no need to destroy the entire act. I feel we have done our very best, under what is a unique and, in some ways, difficult situation. The people in Ottawa-Carleton who are going to be served by this act have, in my humble opinion, tried to avoid the minefields. They have tried to ride the high road, and we are trying to help them do that.

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Mr. Chairman: Any further discussion of Carman McClelland's amendment to section 1, the new subsections 5 and 6?

Mr. Allen: Yes, I just want to say that having gone through the Bill 30 debate on the addition of such a section in Bill 30, we supported that certainly at that time, as we support this one now with respect to this bill. I do not think the mere fact that a pair of boards wish to initiate such a structure necessarily removes them from harm's way in the courts or anywhere else. Boards working together might well violate certain constitutional rights, which could be readily challenged, and it would be foolish to proceed if that were the case.

The difference, of course, for the francophone community essentially is that it does in fact have other Constitution-based rights that come into play alongside section 93 for francophone Catholics, the linguistic minority sections of the charter. There also is, for example, the Ontario Court of Appeal judgement, which states the rights of francophones to the governance of their own schools and states some of the implications of that, and there is some important language there that relates to this issue as well. They are constitutionally, legally in a different position.

Certainly it would be very unwise of us to leave all the provisions of this bill open to various forms of construction that might be inimical both to the French community on the one hand and to Catholic rights on the other. Therefore, it is extremely important that the act not fall because one or two of those sections are challenged and construed in such a way that controverts the intention of the drafters of the bill and the purposes thereof, which I certainly support. It is for those reasons that I think it is extremely important that these two portions of section 1 be added and be part of the bill.

Mr. Jackson: I would like to follow on the questions raised by my colleague the member for Carleton (Mr. Sterling) and the points raised by my colleague the member for Hamilton West (Mr. Allen). If I look at the amendment of the member for Brampton North (Mr. McClelland), I also would like to read

what the government provided as the rationale in terms of this amendment, because I would like to raise a question about it. What we are told here is, and I wish to quote from the document:

"These new amendments seek to reaffirm the constitutional rights of Roman Catholics without endangering the existence of the new board. The new subsection 6 makes it clear that in the event of a provision of the bill being declared unconstitutional, that provision is repealed but the other provisions remain in force."

The minister is indicating that these amendments are placed as a precautionary measure. This is a very unusual amendment. We do not often, if ever, see one that includes all and every section of an entire bill. I guess my first question would be to legislative counsel. It is technically possible for a citizen, we would presume a Catholic citizen in this province, to take each section of this bill to the courts in turn and have each section repealed.

I understand that the way it is written, they would have to do it section by section, or could they do all sections? The point I am getting at is that it indicates that it does not affect the remaining sections. Could you comment about what would happen in the court system as a result of an appeal to the courts, either in part or in whole, of the bill?

Ms. Baldwin: Frankly, I would be more comfortable if we had an opinion from the lawyer from the ministry. Unfortunately, he stepped out of the room for the moment.

Mr. Jackson: I can wait until he returns. But it is quite germane to my point, because what I—

Hon. Mr. Ward: How is it different from the provisions under Bill 30? A citizen can challenge a particular aspect of this bill. He can make a constitutional challenge on the basis that it contradicts his rights. The court can say, in this way or in that way, if it does, that the province then is obliged to amend its legislation. I suppose theoretically, if the whole concept were challenged through a series of references and were found to be unconstitutional, then it would remain for the province to come back with a fundamental change, the creation of two boards or whatever. We believe that no such judgement would be rendered, but it is possible. We are not the courts; you are not the courts.

Mr. Jackson: But at what point is this— I mean, this bill can cannibalize itself, in a sense. It can start eating its sections piece by piece. At what point do you have a dead horse? When do you state that you no longer have an Ottawa-Carleton—

Hon. Mr. Ward: Should the courts rule that way. But Cam, you and I cannot sit as legislators and Supreme Court of Canada.

Mr. Jackson: If you have listened carefully to the point I raised, it was that it refers to all and every section. There was not even an attempt to examine those elements or those sections of the bill which might be subject to review. Why would we force people to go through a long, arduous legal process?

Hon. Mr. Ward: We do not. No one is forced to go through a long, arduous legal process. A person could theoretically sustain a challenge on one section of the bill that could render the entire bill unconstitutional, if you

pick the right clause or whatever. It was the same under bill 30 as well. It is not that they have to go through and cannibalize the bill. If somebody raises a concern about a particular aspect of the bill being found unconstitutional and it is deemed to be so, then the obligation falls on us to rectify that particular aspect.

If someone has a fundamental concern that the whole notion of an umbrella board organization over a two-sector operation is unconstitutional, he can mount that challenge utilizing probably no more than one or two sections. The sustaining of such a challenge would render an end to the umbrella board structure, theoretically again, and it would fall on the Legislature then to bring in legislation of a different nature. We do not believe that will happen.

Mr. Jackson: You are satisfied that the division of property by sectors and the immediate transfer of properties by sectors would, in and of itself, not complicate the dismantling of this bill if a challenge were successful?

Hon. Mr. Ward: Yes.

Mr. Jackson: Thank you for putting that on the record.

Mr. Chairman: Is there further discussion of Mr. McClelland's amendment to section 1?

Mrs. O'Neill: Did we vote on section 1 in its entirety?

Mr. Chairman: No, not yet. Those in favour of the amendment? Against?

Motion agreed to.

Mr. Chairman: I call section 1 in its entirety, as amended. Those in favour? Against? Carried.

Section 1, as amended, agreed to.

L'article 1, modifié, est adopté.

Mr. Chairman: As far as I am concerned, that completes our clause-by-clause—

Mr. Jackson: You have indicated that you would be willing to reopen. I had one specific section that I would like to reopen for purposes of a question and, potentially, a minor word amendment. If I have unanimous approval of the—

Mr. Chairman: Yes, you have approval for that.

Mr. Jackson: Thank you. Specifically, it is subsection 61(1), the transfer of real property. It has been before us. However, in the explanation, I just want to read that part—

Mr. Chairman: This is page 74.

Mr. Jackson: Yes. In the explanation in part XII it says, "All schools belonging to any of the four school boards now in the Ottawa-Carleton region and used on or after January 31, 1988 as French-language schools are to be transferred to the French-language board on January 1, 1989." It goes on.

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The reference there clearly is to schools, and yet in subsection 61(1) here, we have, "Any real property of an English-language board that on the 31st day of January, 1988 was a school site used by the French-language instructional units", etc. My question is, what is the real intention here, to transfer school sites, schools, pieces of real estate?

Hon. Mr. Ward: Having gone through that exercise in other forums at other times, I believe the reason for going to a school site is that by using that terminology, it can be either/or, a facility or a site.

Mr. Jackson: Can I ask, then, does the minister interpret that to include a percentage of the board offices?

Hon. Mr. Ward: Pardon me?

Mr. Jackson: Does that include, in the minister's opinion, a percentage of the administrative offices?

Hon. Mr. Ward: No. We are talking about facilities that are transferred; the transfer of real property.

Mr. Jackson: I will give you an example. I have a school board site which is 20 acres and a building is situated on only 2.5 acres. It is deemed that the francophone population that is transferring is 30 per cent of the board; therefore, I have an entitlement to 30 per cent of the land affixed to and part of the main board office. Do I therefore have a claim or do I not have a claim to 30 per cent of the land, which could be worth substantial dollars?

Hon. Mr. Ward: The issues relative to all of that—

Mr. Jackson: This is raised in Bill 30. That is why I am asking it now.

Hon. Mr. Ward: I do understand that. Bill 30 did not make provision for an appropriate transfer of assets or whatever.

Mr. Jackson: It did not stop anybody from asking.

Hon. Mr. Ward: I realize that. What this legislation does is put in place a mechanism throughout, by which a determination is made at the local level by the parties involved relative to the transfer of assets. That determination will be made with appropriate dispute resolution mechanisms built in at that level. The legislation is not predetermining access to—we are not making those predeterminations in this legislation.

Mr. Jackson: I know you have given a general response, but what about—

Hon. Mr. Ward: The parties have to agree on what the assets are, Cam.

Mr. Jackson: But with all respect, minister, maybe legal counsel would like to jump in—I can assure you that it is written in such a way that "a school site" which is not specifically referred to in the front section can mean just about anything. It could be a depot where they park school board—

Hon. Mr. Ward: That is correct. They are all assets paid for in part by the ratepayers of this board.

Mr. Jackson: So they can claim a percentage of the main office.

Hon. Mr. Ward: Yes. Again, my concern was whether you were talking about that in real terms or whatever. I was not quite sure where you were coming from. They can claim, through the process of negotiation, what they deem to be their share of the assets. The assets may include all property, including the administrative offices, unless I am reading it wrong. That was my understanding—whatever the assets are, period, including board offices, whatever.

Mrs. O'Neill: There certainly are very intense negotiations going on in the Ottawa-Carleton area on every one of these kinds of things you are mentioning—depots, administrative buildings, buildings where consultants are housed. There are all kinds of them. It would be very difficult to put them into the act. It seems much better to let the local boards decide how they are going to divide those facilities that, as the minister has said, have been paid for by the total board, even before Bill 75 came along.

Hon. Mr. Ward: On a point of clarification, the matters you were referring to are under section 62. Section 61 only deals with sites that are being used as French-language instructional units currently. As to your reference to the board office, etc., those will be under section 62.

Mr. Jackson: What about leased properties or leasehold arrangements? Are they covered in this bill?

Mrs. O'Neill: We had one amendment that indicated that. Do you have the number of that amendment, Mr. Lamontagne?

Mr. Jackson: I do not need that drawn to my attention. But it is covered in this bill?

Hon. Mr. Ward: Yes, it is.

Mrs. O'Neill: We added it in one of our amendments.

Hon. Mr. Ward: Section 61 is school sites, and section 62 is all other assets.

Mr. Lamontagne: Subsection 61(7).

Mr. Sterling: I have one question. We heard about their concern over financing from both of the French sectors of the public boards, both the Ottawa and the Carlton boards of education.

I am sorry I was not here yesterday; I had to debate another bill in the House. Is there any guarantee in this legislation for the quality of education for young francophone students who will now be under the guise of this new board? Is there a guarantee that the quality of education they will receive will be equal to what they were receiving under the existing system?

Hon. Mr. Ward: The funding arrangement for this board, until such time as the financial reform takes place in this province, is by way of regulation on an interim basis. It will be on the basis of current board expenditures within the region, both approved and unapproved, so that these students are guaranteed that quality.

However, beyond the interim basis, the only choice would remain, as with any other board, given the various funding mechanisms, to wait until such time as the province has made its determinations on what form financing should ultimately take. Frankly, I do not see how we could put that in the bill in the absence of what those policy structures are.

This board will be funded by way of regulation on the basis of the expenditure levels they are used to in that region. For the long term, they will be funded like any other board in this province, on the basis of what financial reform takes place.

Mr. Sterling: So there are no guarantees in the bill at all in terms of the financing of the public sector of the francophone board? They were the people who raised it in particular.

Hon. Mr. Ward: No guarantees. The public sector of the francophone board will be funded the first year to the same extent it was funded prior to the establishment of this board.

Mr. Sterling: What about on an ongoing basis?

Hon. Mr. Ward: On an ongoing basis, it will be funded the same as every other board in this province.

Mr. Sterling: So that if it loses property assessment, business assessment by the transfer because of the existing property tax situation—

Hon. Mr. Ward: No. You are looking at the existing. What I am saying is that it will not be funded in the long range under the existing. It will be funded on the basis of whatever financial arrangements are in place province-wide.

Mr. Jackson: The grant formula will kick in to reflect the loss of assessment so that grants will increase at a decreasing rate, according to the current trends in funding in education.

Hon. Mr. Ward: Part of the problem we have is trying to sort out a 30-year or 40-year mess of educational financing. Many ministers, including several of my predecessors, have prepared it and I am not sure what form it will ultimately take.

Mr. Jackson: I know.

Mr. Chairman: Further discussion?

Je propose le projet de loi 109, Loi portant création d'un Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton.

I call Bill 109, An Act to establish a French-language School Board for the Regional Municipality of Ottawa-Carleton.

Those in favour? Against? Carried.

Bill, as amended, ordered to be reported.

Le projet de loi, modifié, devra faire l'objet d'un rapport.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT.

ORGANIZATION

TUESDAY, JUNE 28, 1988

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Adams, Peter (Peterborough L)

VICE-CHAIRMAN: LeBourdais, Linda (Etobicoke West L)

Allen, Richard (Hamilton West NDP)

Campbell, Sterling (Sudbury L)

Cousens, W. Donald (Markham PC)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

McClelland, Carman (Brampton North L)

McGuinty, Dalton J. (Ottawa South L)

O'Neill, Yvonne (Ottawa-Rideau L)

Tatham, Charlie (Oxford L)

Substitution:

Elliot, R. Walter (Halton North L) for Mr. Tatham

Clerk: Carrozza, Franco

Clerk pro tem: Decker, Todd

Staff:

Gardner, Dr. Robert J. L., Assistant Chief, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, June 28, 1988

The committee met at 4:15 p.m. in room 151.

ORGANIZATION

Mr. Chairman: Ladies and gentlemen, this is the standing committee on social development. I understand that no bills have been referred to the committee for this summer. There are some 90 hours of estimates time outstanding, but as you know, we are not allowed to consider estimates while the House is not sitting.

Two bills, to my knowledge, have been referred to us, Bill 50, the Community Mental Health Services Act, and Bill 143, the Deaf Persons' Rights Act. Neither of those has been assigned for work this summer.

Does anyone have any comment on this or related matters?

Mr. R. F. Johnston: I think our presumption was that we would be sitting for two weeks to deal with the access bill, and that now is not forthcoming. I think there is a reluctance among House leaders to have us sit for any other purpose except perhaps for consideration of Bill 50. Should the mover, Mr. Reville, wish it at that time—unfortunately, Mr. Reville is out of the country and very hard to get hold of because of the operators' strike we have at the moment with Bell Canada, so we are not able to determine today whether he does wish it to come forward.

Other critics, including Mr. Eves from the Conservative Party, and the minister are under the impression that he does not wish to proceed at this time, so the presumption has been that perhaps we would decide not to meet this summer. If there is a change in that tonight, if we learn that Mr. Reville wishes to come forward with Bill 50, we will then, by motion tomorrow, be asked to meet briefly to set up our organization at that time, but I think the presumption at this stage is that we will not be meeting for those two weeks in August.

Mr. Chairman: Thank you for that. Any further comment?

Mr. Jackson: I am somewhat concerned about the slipping priority this committee seems to have in terms of its being an effective vehicle for examining legislation or for the review of private members' resolutions.

I wish to put on the record my complete disappointment that the standing committee on social development is not dealing with a variety of issues which have been presented to the government since it was elected 10 months ago.

In particular, I want to reference, and I believe I have every right to do so, the private resolution I tabled with respect to an examination of the courts' attitude and response to rape crisis victims in this province. The rationale was advanced during the debates that this committee was far too busy to deal with the matter. That in and of itself leaves a very bad feeling.

I have heard from a considerable number of women's groups around the

province who heard that rationale, who bought that rationale and who will be much dismayed to find out that this committee is doing nothing for the next three to four months, when in fact an opportunity was there to examine a matter that is of great concern to a lot of individuals, as was indicated in the House. Approximately one in four women in this province is subjected to some form of physical or sexual abuse. Although that debate has since come and gone, I think the rationale that was advanced by the government in not wishing to deal with the issue should be put on the record.

Now that all the committees have had their agendas ordered, I further wish to comment—and you as chairman of this committee will also be sensitive to the fact—that a considerable amount is now being spent for certain activities committees will be involved in during the next four months. It seems to underscore that the standing committee on the Legislative Assembly has greater priority in this province.

That committee can go to a four-day conference in Reno, Nevada, at a cost of approximately \$40,000 to the taxpayers of this province; yet Mr. Reville's outstanding and most appropriate bill with respect to the rights of residents of this province with mental difficulties, as well as the Provincial Auditor's concern with respect to the services rendered to this group in our province—I have to as well put on the record that I question seriously the degree of concern of the House leaders; I believe they all share equally, but the government clearly drives the agenda in terms of what gets referred to committees and what becomes a priority.

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It is a point which disturbs me greatly now in my fourth year in the Legislature, that two clearly defined issues of social consequence and significance in this province have been set aside for trips abroad at great expense. Quite frankly, it seems that our committee has ended up at the bottom of the list. I am deeply disturbed and upset about it. We will leave it at that.

I am sure, Mr. Chairman, that you did articulate the concerns of this committee forcefully to the House leaders and I am sorry we were unable to have the agenda items all members of this committee share, that they did not have significant import for this summer, for the next four-and-a-half-month period in fact.

Mr. Campbell: Certainly. I want to clarify again for the record that the order of business is determined by the House leaders, and they agree or disagree as the case may be somewhat on the recommendation of this committee. I think I can speak for the chairman when I say that the position was put forcefully and I think all House leaders agreed that there were other items of business which had to be dealt with this summer. I am not going to comment on their prioritization of them, but certainly there were other items agreed to by all House leaders. I just wanted to re-emphasize that point.

Mr. Chairman: Any other comments? I might say, first, that I am pleased with the work we have done; in the last few weeks in particular, in very hectic times in the Legislature, we have got through a fair amount of work. I would say, though, that I too am disappointed that we are not in fact carrying through on a number of items this summer.

With respect to your motion, Cam, as it was defeated, of course, there is no way the House could refer a defeated motion to us. I think we understand that.

With regard to David Reville's Bill 50 and the standing committee on public accounts endorsement, as it were, of the importance of community mental health at this time, I am particularly disappointed there. I only hope that David Reville does find the time and the energy to suggest to the House leaders that he would be willing for us to consider that this summer.

I am not sure where Richard Johnston has gone.

Mrs. O'Neill: To check with his office about Mr. Reville's—

Mr. Chairman: Perhaps we could recess then for two minutes until Richard Johnston comes back, because he may be waiting for a message from David Reville.

The committee recessed at 4:23 p.m.

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Mr. Chairman: Unless there is further input, I suggest that we adjourn at the call of the chair. I will undertake, certainly, to advise you of any new information that we receive in the next couple of days. You will be phoned in your offices if there is a change.

I also will undertake to send each of you a summary of the work the committee has done to this point. I think that might be useful to you all.

Any further business?

Mr. R. F. Johnston: The only thing is that if this does fall through, it is too late, unfortunately, for us then to make other plans. A number of other matters have been raised; Mr. McGuinty raised some subject areas we should be looking at, that sort of thing.

In a sense, I think we should probably rethink how we set our priorities and fallback plans in the future, because I think we had all presumed that Bill 50 had been shoved aside and that Bill 124, the Children's Law Reform Amendment Act, would be up. I think Mr. Reville presumed that as well in terms of his plans. It may be now that this is not something he can accommodate himself, and we do not have a fallback position.

I think Cam Jackson's position is accurate, that this is a committee which could be looking at a number of issues in the social area and could well have used its time to do some of that. At this stage, as the House closes, it is impossible for us to do anything much about it, but if we are not able to work out something on Bill 50, perhaps when we meet in the fall, then we should do so.

If we are able to meet on Bill 50, it might also be wise to take a bit of time during those meetings, at the tail-end of those meetings perhaps, to talk about our notions of what we would like this committee to do over the next while, so that if government initiative does not come our way, we actually would know where we would go if that did not take place.

Mr. Chairman: The last thing I would comment on is that with Dalton McGuinty's initiative with regard to senior citizens, I see we do have 10 hours of estimates with that ministry, but again we have to wait until the House reconvenes.

Any further comment?

Mr. McGuinty: I want to make sure I understand the situation. Should matters arise, either with regard to Mr. Reville's disposition or others, are we ready for a call some time during the summer?

Mr. Chairman: No. I think the call has to come before the House finishes.

Mr. Jackson: Before 5:30 tomorrow.

Mr. McGuinty: Perhaps it would be possible, if any firmer resolution on this prior to 5:30 tomorrow is possible, that we might be notified.

Mr. Chairman: Absolutely. That is my intention, Dalton. If there is a change and the House in its wisdom assigns something to us, you will know and then be able to plan for the summer.

Mr. Jackson: It is unusual practice, but I want to suggest that we pass a resolution predicated on the notion that Mr. Reville is ready, willing and able. I might seek Richard's response to that.

Mr. R. F. Johnston: He is away, unfortunately, and—

Mr. Chairman: I would be a little concerned about it. I have already been twice in a fairly formal way to the House leaders, Cam, and it has not worked. As I said in two or three previous meetings, members should approach their own House leaders. I said this quite openly and firmly.

Mr. Jackson: We did, OK? I do not want to get into this in a lot of detail, Mr. Chairman; let's not harangue it, OK? I gave a lot of latitude on the House leader business, but the fact is that if the social policy field were a priority for this government, we would be meeting, and we are not. I want to leave it at that. Do not overdo this "you had time to talk to your House leader" business.

Mr. Chairman: By the way, it was not in the tone of criticism that I put it. I will continue to deal with the House leaders myself. I simply think that the formal motion thing has not worked in the past—

Mr. Jackson: Fair ball.

Mr. Chairman: —and that in the time which is left to us, we should all continue to talk to our people.

Mr. R. F. Johnston: I think it has to be understood how the formal motion has to work. There is a very long motion about what all the committees are doing which is being drafted at this very moment. By the very nature of that fact, we could not include something we do not know is going to happen. We could not put in Bill 50 and then withdraw it tomorrow; that would be awkward.

It is easier, procedurally, to have that go forward and then, if we find Mr. Reville is available, for them to move a motion quickly in the House during orders of the day saying we should meet. For us to then request again the two weeks and have that added as a motion at the end of the day is a very short written motion. That is why it is better at this stage to go with nothing than with something.

The difficulty we have in terms of the direction Dalton might have

wanted us to go, for instance, to insert some hearings on matters concerning seniors and to find a focus for that, is that it is something we really cannot do at this late hour because we have had no time to prepare what our priorities would be, how much time we would need and get that sort of advice. That is the difficulty we are in, and I regret we did not set up some fallback positions at this stage so that we might have had something meaningful to do this summer.

Mr. Campbell: Maybe to wrap up, we probably succeeded by our own success in the numbers and the amount of legislation we did cover in a relatively short period of time. I think the notion Mr. Johnston is talking about is something we should definitely look at in the fall if in fact we do not meet. I would suggest that is the business.

Mr. Johnston: I will let the chair know as soon as I hear anything from Mr. Reville.

Mr. Chairman: The committee is adjourned at the call of the chair.

The committee adjourned at 4:31 p.m.

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